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NEW JERSEY REGISTER

INTER-OFFICE

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VOLUME 23 NUMBER 8

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(Includes adopted rules filed through March 22, 1991)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: FEBRUARY 19, 1991
See the Register Index for Subsequent Rulemaking Activity.

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On occasion, a proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. An extended comment deadline will be noted in the heading of a proposal or appear in a subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-4.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

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NEW JERSEY REGISTER

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EXECUTIVE ORDERS

(a)

OFFICE OF THE GOVERNOR
Governor James J. Florio
Executive Order No. 28(1991)
State Council on Vocational Education

Issued: March 15, 1991.
Effective: March 15, 1991.
Expiration: Indefinite.

WHEREAS, on September 25, 1990, the 101st Congress of the United States enacted Amendments to the Carl D. Perkins Vocational Education Act of 1984, which amendments are referred to as the Carl D. Perkins Vocational and Applied Technology Education Act of 1990, Federal Public Law 101-392 (hereinafter referred to as the "Perkins Act"); and

WHEREAS, the public interest of citizens of the State of New Jersey requires that the State shall do all that is or may be required to secure for the State of New Jersey the benefits of Federal appropriations under the Perkins Act for all purposes specified therein; and

WHEREAS, the Perkins Act requires that each state establish an advisory council on vocational education as a condition of the receipt of federal funds for vocational education programs; and

WHEREAS, New Jersey has previously complied with this federal requirement through the establishment of an advisory council by Executive Order No. 126 (Kean); and

WHEREAS, New Jersey has recently passed legislation permanently establishing the State Employment and Training Commission (hereinafter referred to as the "Commission") with a broad mandate to develop and assist in the implementation of a State employment and training policy that will create a coherent, integrated system of employment and training programs; and

WHEREAS, the implementation by the Commission of its responsibility for overall coordination of employment and training programs must include vocational education as a vital component of the State's employment and training policy; and

WHEREAS, coordination and cooperation between the Commission and the State's federally-mandated advisory council on vocational education will strengthen the State's capacity to maintain a suitable climate for continued economic development by meeting the needs of industry for a workforce fully trained in modern and emerging technologies; and

WHEREAS, this coordination can best be achieved by reconstituting the advisory council and establishing procedures that will ensure an effective working relationship between the Commission and the advisory council;

NOW, THEREFORE, I, JAMES J. FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1.a. There is hereby established the State Council on Vocational Education (hereinafter "the State Council") which shall be composed of 13 individuals appointed by the Governor and shall be broadly representative of citizens and groups within the State having an interest in vocational education as follows:

(1) seven individuals who are representative of the private sector in the State.

(A) Five of these individuals shall be representative of business, industry, trade organizations and agriculture including

(i) one member who is representative of small business concerns; and

(ii) one member who is a private sector member of the State Job Training Coordinating Council (established pursuant to Section 122 of the Job Training Partnership Act referred to as the Commission in New Jersey) and

(B) Two of these individuals shall be representatives of labor organizations;

(2) six individuals who are representative of secondary and post-secondary vocational institutions (equitably distributed among such institutions), career guidance and counseling organizations within the State, individuals who have special knowledge and qualifications with respect to the special educational and career development needs of special populations (including women, the disadvantaged, the handicapped, individuals with limited English proficiency, and minorities) and of whom one member shall be representative of special education and may include members of vocational student organizations and school board members.

b. In making appointments to the State Council, due consideration shall be given to those persons who serve on a private industry council under the Job Training Partnership Act or on State councils established under other related federal acts and to those persons who are members of the Commission and who possess the qualifications necessary to serve on the State Council.

c. Members shall serve for terms of three years, except that, of the initial appointees pursuant to this Executive Order, four shall serve for terms of one year, four shall serve for terms of two years and five shall serve for terms of three years. The terms of any member of the State Council who is also a member of the Commission shall be the same as his or her term on the Commission. Any individual appointed to fill an unexpired term shall serve for the unexpired portion of the term.

2. The functions of the State Council shall be in accordance with Section 112 of Public Law 101-392 and the State Council shall be assigned in, but not of, the Department of Labor.

3. The State Council shall:

(a) meet with the State Board of Education (hereinafter referred to as the State Board) or its representatives to advise on the development and make recommendations to the subsequent State Plan for Vocational Education. The State Council may submit a statement to the secretary of the United States Department of Education reviewing and commenting upon the State Vocational Education Plan. Such statement shall be sent to the Secretary with the State Plan.

(b) make recommendations to the State Board and make reports to the Governor, the business community and general public of the State, concerning

(1) the State Vocational Education Plan;

(2) policies the State should pursue to strengthen vocational education (with particular attention to programs for the handicapped); and

(3) initiatives and methods the private sector could undertake to assist in the modernization of vocational education programs;

(c) analyze and report on the distribution of spending for vocational education in the State and on the availability of vocational education activities and services within the State;

(d) furnish consultation to the State Board on the establishment of evaluation criteria for vocational education programs within the State;

(e) submit recommendations to the State Board on the conduct of vocational education programs conducted in the State which emphasize the use of business concerns and labor organizations;

(f) assess the distribution of financial assistance furnished under Public Law 100-392, particularly with the analysis of the distribution of financial assistance between secondary vocational education programs and post-secondary vocational education programs;

(g) recommend procedures to the State Board to ensure and enhance the participation of the public in the provision of vocational education at the local level within the State, particularly the participation of local employers and local labor organizations;

(h) report to the State Board on the extent to which the individuals who are members of special populations are provided with equal access to quality vocational education programs;

(i) analyze and review corrections education programs; and

(j) (1) evaluate at least once every 2 years

(i) The extent to which vocation education, employment, and training programs in the State represent a consistent, integrated, and coordinated approach to meeting the economic needs of the State;

(ii) the vocational education program delivery system assisted under this Act, and the job training program delivery system assisted under the Job Training Partnership Act, in terms of such delivery systems' adequacy and effectiveness in achieving the purposes of each of the aforementioned Acts; and

(iii) make recommendations to the State board on the adequacy and effectiveness of the coordination that takes place between vocational education and the Job Training Partnership Act;

(2) comment on the adequacy or inadequacy of State action in implementing the State plan;

(3) make recommendations to the State board on ways to create greater incentives for joint planning and collaboration between the vocational education system and the job training system at the State and local levels; and

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(4) advise the Governor, the State board, the State Employment and Training Commission, the Secretary, and the Secretary of Labor regarding such evaluation, findings, and recommendations.

4. The Chairperson of the Commission shall analyze and, to the extent required, reorganize the current work and structure of the Commission to assist the activities and functions of the State Council.

5. To the extent permitted by Federal law, members of the Commission not designated as State Council members may participate in the work of the State Council, may attend its meetings, may, at the discretion of the Chair of the State Council, enter into discussions on matters before the State Council, but may not vote on matters before the State Council.

6. The State Council is authorized to apply for and receive funds to obtain the services of such professional, technical and clerical personnel as may be necessary to enable it to carry out its functions under the Perkins Act and to contract for such services as may be necessary to enable the State Council to carry out its evaluation functions independent of programmatic and administrative control by other State boards, agencies and individuals.

7. The expenditure of the funds paid pursuant to the Perkins Act is to be determined solely by the State Council for carrying out its functions under the Federal Act, and may not be diverted or re-programmed for any other purpose by any State board, agency or individuals. The State Council shall designate an appropriate State agency or other public agency, eligible to receive funds under the Federal Act, to act as its fiscal agent for purposes of disbursement, accounting and auditing.

8. The State Council shall meet as soon as practicable after certification has been accepted by the Secretary of Education and shall select from among its membership a Chairperson who shall be representative of the private sector. The time, place and manner of meeting, as well as State Council operating procedures and staffing, shall be as provided by the rules of the State Council, except that such rules must provide for not less than one public meeting each year at which the public is given an opportunity to express views concerning the vocational education program of the State.

9. Executive Order No. 126 (Kean) is hereby rescinded.

10. This Order shall take effect immediately.

(a)

OFFICE OF THE GOVERNOR
Governor James J. Florio
Executive Order No. 29(1991)
Recognition of Residents Serving in Operation Desert Shield/Storm

Issued: March 20, 1991.
Effective: March 20, 1991.
Expiration: Indefinite.

WHEREAS, the President of the United States issued an Executive Order on August 22, 1990 authorizing the call to active duty with the Armed Forces and Coast Guard of the United States of America selected New Jersey resident members of the Reserves or the National Guard in support of Operation Desert Shield/Storm;

WHEREAS, Executive Order Number 15 was signed into effect on September 13, 1990 directing that New Jersey State employees called to active duty during Operation Desert Shield would be entitled upon termination of such active duty to return to State employment with full seniority and benefits; would be entitled to receive a salary equal to the differential between the employee's State salary and the employee's military pay up to 180 days; and would be entitled to State employee health benefits, life insurance and pension coverage while receiving differential salary as if they were on a paid leave of absence; and

WHEREAS, Executive Order Number 25 was signed into effect on January 18, 1991 commensurate with the conversion of Operation Desert Shield to Desert Storm extending the provisions of Executive Order 15 to the duration of individual mobilization and deployment on active duty; and

WHEREAS, Emergency Rule N.J.A.C. 18:34-1.25 was adopted on January 31, 1991 certifying that an Imminent Peril exists extending the time for filing individual and joint income tax returns and the payment of gross income tax for a period of combat service or hospitalization, plus 180 days without fine or penalty for mobilized New Jersey residents; and

WHEREAS, on February 9, 1991 the citizens of New Jersey reached out to their fellow citizens, families and neighbors called to duty in an expression of support and concern in an Interfaith Service held at the Trenton War Memorial; and

WHEREAS, these resident Reserve and National Guard members served their State and Nation with distinction without regard to personal and family hardship and sacrifice; and

WHEREAS, the State of New Jersey acknowledges the contributions to the peace and freedoms enjoyed by all of its citizens made by these dedicated and loyal citizen-soldiers, -marines, -sailors, -airmen and -coast guardsmen; and

WHEREAS, it is realized that many of the State's resident Mobilized Reserve and National Guard members and their families will suffer short and long term emotional, financial and physical hardships due to their service during Operation Desert Shield/Storm; and

WHEREAS, it is only fitting and proper that the State recognize the sacrifices made by its resident Reserve and National Guard members and the debt owed to them; and

WHEREAS, the New Jersey Department of Military and Veterans' Affairs through its military and veteran activities has been coordinating, overseeing and assisting in the mobilization of National Guard units, as well as in programs to aid mobilized and deployed State residents and their families regardless of component and service; and

WHEREAS, the New Jersey Department of Military and Veterans' affairs has an existing organization of Family Assistance Groups and coordinators as well as Veterans' Services Officers and Veterans' Programs which now are assisting mobilized residents and their families and are prepared to continue to do so upon their demobilization and return to civilian life;

NOW, THEREFORE, I, JIM FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby Order and Direct:

1. Any New Jersey resident mobilized into Active Duty with the Armed Forces or Coast Guard of the United States by order of the President for Operation Desert Shield/Storm will be considered eligible for those Veterans' Entitlements for which they are in all other aspects qualified.

2. The New Jersey Department of Military and Veterans' Affairs is charged with the responsibility for the coordination of the provision of such entitlements and services offered by the State in support of its Mobilized Residents and their families.

3. The Adjutant General of the New Jersey Department of Military and Veterans' affairs will develop and establish the criteria for a New Jersey Operation Desert Shield/Storm Service Medal in order to appropriately recognize the sacrifices of New Jersey's resident Reserve and National Guard members and their service to State and Nation.

4. All New Jersey Veterans' organizations and employers are encouraged to cooperate with the Department of Military and Veterans' Affairs and with their local communities to ensure that the State's returning service members receive the reception and support that they and their families deserve.

5. The Department of Military and Veterans' Affairs shall also serve as the coordinating agency for all inquiries made by Military personnel, their families and the general public concerning available support services and entitlements.

6. Each city, municipality and county of the State is encouraged to render by ceremony a fitting tribute to the services of their respective citizens who were called to duty during Operation Desert Shield/Storm as they deem appropriate.

7. The Adjutant General of the New Jersey Department of Military and Veterans' Affairs shall implement this Executive Order and each department, office, division or agency of the State is authorized and directed, to the extent not inconsistent with law, to cooperate with the Adjutant General and to make available to him such information and assistance as may be necessary to accomplish the purposes of this Order.

8. This Executive Order shall take effect immediately.

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RULE PROPOSALS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules Representation by Non-lawyers Proposed Amendment: N.J.A.C. 1:1-5.4

Authorized By: Jaynee LaVecchia, Director, Office of Administrative Law.

Authority: N.J.S.A. 52:14F-5(e), (f) and (g).

Proposal Number: PRN 1991-183.

Submit comments by May 15, 1991 to:
Steven L. Lefelt, Deputy Director
Office of Administrative Law
Quakerbridge Plaza, Bldg. 9
CN 049
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.A.C. 1:1-5.4 permits representation in contested case hearings by some non-lawyers, including State agency employees representing the agency, and sets forth the procedure non-lawyers must follow to obtain permission to appear. As part of this procedure, State agency employees are required by N.J.A.C 1:1-5.4(b)2i to file a written Notice of Appearance/Application which contains a statement signed by a Deputy Attorney General (DAG) indicating that the Attorney General will not provide legal representation for the agency in the case. The purpose of this requirement is to insure that the Attorney General's Office, which represents all State agencies, has "signed off" on the fact that the agency will be represented by an employee rather than a DAG. Recently, the Attorney General's Office advised the Office of Administrative Law (OAL) that it has decided to delegate to agencies the authority to "sign off" on non-lawyer representation. When this delegation is made, a DAG's signature will no longer be necessary on the Notice of Appearance. Therefore, the OAL proposes to amend N.J.A.C. 1:1-5.4(b)2i to eliminate the requirement for a DAG's signature. Instead, the Notice of Appearance will include a statement indicating that the agency employee applying to appear as a non-lawyer representative of the agency has been assigned by the agency to represent the agency in the case and that the Attorney General has decided not to provide representation by a DAG.

Social Impact

The proposed amendment recognizes the fact that the Attorney General's Office has decided to delegate to the agencies the authority to "sign off" on non-lawyer representation when a DAG will not appear for the agency. The proposed amendment may promote efficiency in hearings by preventing delays caused when a DAG signature has not been obtained on a Notice of Appearance/Application.

No negative social impact is anticipated. The proposed amendment does not expand or limit non-lawyer representation. The Attorney General's Office will retain the authority to decide when DAG representation will be provided in a particular case. The proposed amendment simply eliminates the need for a DAG to sign the Notice of Appearance of an agency employee who will represent the agency at the hearing instead of the DAG.

Economic Impact

The proposed amendment will have no negative economic impact because it does not change existing practice except insofar as the signature of a DAG will no longer be required on the Notice of Appearance/Application of a State agency employee seeking permission to represent the agency in a contested case hearing.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment eliminates the requirement that a DAG sign the Notice of Appearance/Application of a State agency employee seeking permission to represent the agency in a contested case hearing.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

1:1-5.4 Representation by non-lawyers; authorized situations, applications, approval procedures

(a) (No change.)

(b) The non-lawyer applicants in (a) above may apply for permission to appear by supplying the following information and by complying with the following procedures:

1. (No change.)

2. A written Notice of Appearance/Application on forms supplied by the Office of Administrative Law shall be required in cases where a non-lawyer employee seeks to represent a State agency; in Civil Service cases, where a union representative seeks to represent a State, county or local government employee; where a non-lawyer seeks to represent a party in a special education hearing; where a principal seeks to represent a close corporation, and where a non-lawyer from a legal services program seeks to represent an indigent. A non-lawyer from a legal services program seeking to represent a recipient or applicant for services in Division of Public Welfare, Division of Medical Assistance and Health Services and Division of Youth and Family Services cases may make oral application to represent the recipient or applicant by complying with the requirements of (b)1 above.

i. For non-lawyer employees seeking to represent a State agency, the Notice shall include a statement that the non-lawyer is an employee of the State agency he or she seeks to represent; his or her position at the agency; his or her supervisor at the agency; his or her supervisor's position, business address and telephone number; and an explanation of his or her special expertise or experience in the matter in controversy. The Notice shall also contain a statement [signed by a Deputy Attorney General for the State agency that the Attorney General will not provide representation for the agency in the case] **indicating that the employee has been assigned to represent the agency in the case and that the Attorney General will not provide legal representation.**

ii.-viii. (No change.)

EDUCATION

(b)

STATE BOARD OF EDUCATION

Special Education

Proposed Amendments: N.J.A.C. 6:28-1.1, 1.3, 3.2, 3.5, 3.7, 4.2, 4.4, 6.5, 7.1, 7.2, 10.1 and 11.4 Proposed New Rule: N.J.A.C. 6:28-10.2

Authorized By: State Board of Education, John Ellis, Secretary, State Board of Education and Commissioner, Department of Education.

Authority: N.J.S.A. 18A:4-15, 18A:7A-1 et seq., 18A:7B-1 et seq., 18A:7C-1 et seq., 18A:40-4, 18A:46-1 et seq., 18A:46A-1 et seq., 18A:48-8, 39:1-1, U.S.P.L. 93-112, Sec. 504, 94-142 and 99-457.

Proposal Number: PRN 1991-192.

Submit written comments by May 15, 1991 to:
Irene Nigro, Rules Analyst
New Jersey Department of Education
225 West State Street, CN 500
Trenton, New Jersey 08625

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The agency proposal follows:

Summary

Amendments to N.J.A.C. 6:28 are proposed for the purpose of implementing the additional cost factor established by P.L. 1990, c.52, for pupils classified as autistic. This law is known as the Quality Education Act (QEA). Amendments are also proposed for the purpose of complying with recent information received from the United States Department of Education regarding the provision of educational programs to handicapped children age three and teacher certification standards in accredited nonpublic schools which are not specifically approved for the education of handicapped pupils. In addition, amendments are proposed to no longer require approved private schools for the handicapped to have a board of directors of six members, 50 percent of whom are disinterested parties.

The four sets of amendments are summarized:

1. Quality Education Act—Definition of Autistic

In order for the Department to implement the QEA autistic additional cost factor, it is necessary to amend N.J.A.C. 6:28 to include a definition for this classification. It is also necessary to establish a maximum class size and require additional evaluations for these pupils due to the nature of their handicapping condition. The following amendments are proposed:

N.J.A.C. 6:28-3.5(c)2 has been amended to define the term "autistic."

N.J.A.C. 6:28-4.4(a)6 has been amended to set a maximum special education class size of six pupils with an aide at the elementary level and nine pupils with two aides at the secondary level in classes for the autistic.

N.J.A.C. 6:28-4.4(a)7 has been amended to prohibit the use of exceptions to increase the maximum class size in programs for the autistic.

N.J.A.C. 6:28-3.5(c)2 and 3.7(a)1 have been amended to require that a speech-language assessment and an evaluation by a physician trained in neurodevelopmental assessment be conducted whenever an autistic pupil is evaluated.

2. Age Three Definition

The second set of amendments would achieve compliance with Section 619 of Federal P.L. 99-457 which requires that school districts make available a free, appropriate public education for handicapped children by their third birthday. Under the current rules children attaining age three by December 31 of the school year may enter preschool handicapped programs in that school year. However, children who attain chronological age three after December 31 must wait until the beginning of the next school year to enter those programs. In order to comply with the Federal requirement, amendments are proposed to require district boards of education to provide a free, appropriate public education for children when they attain their third birthday. Children enrolled in early intervention programs may remain in them for the balance of the school year when districts contract with them for the provision of services. The following amendments are proposed:

N.J.A.C. 6:28-1.1 has been amended to clarify that children attaining age three may receive their special education program in facilities that are approved by the State or in early intervention programs which are under contract with the Department of Education.

N.J.A.C. 6:28-1.3 has been amended to change the definition of age three to the attainment of the third birthday.

N.J.A.C. 6:28-3.2(d) and 11.4(c) have been amended to change the timelines for the identification to the district board of education of children in early intervention programs.

N.J.A.C. 6:28-4.2(b) has been amended to clarify the three program options available for preschool handicapped pupils.

In N.J.A.C. 6:28-10.1, the title has been amended to distinguish it from N.J.A.C. 6:28-10.2 and to include specific reference to the early intervention programs it regulates.

N.J.A.C. 6:28-10.2 has been added to specify the requirements for early intervention programs which contract with district boards of education.

3. Nonpublic Schools—Teacher Certification Requirements

The recent interpretation by the United States Department of Education regarding certification standards necessitates an amendment to the procedures for placement in accredited nonpublic schools. The following amendment is proposed:

N.J.A.C. 6:28-6.5(b)5 has been amended to continue the requirement that teachers providing special education and related services be certified. However, teachers providing regular education programs may either hold the appropriate certificate or meet the personnel qualification standards of a recognized accrediting authority.

4. Approved Private Schools for the Handicapped—Board of Directors

The Department has determined that it is no longer necessary to include requirements in the special education rules which set forth standards for the composition of boards of directors in approved private schools for the handicapped. It is sufficient to rely upon the statutory requirements of N.J.S.A. 14A and 15 which contain the laws regarding the establishment and maintenance of for profit and not for profit corporations. The following requirements are proposed for repeal:

N.J.A.C. 6:28-7.1(g) required approved private schools which had a change in corporate structure or change in the structure of its governing body to comply with rules to comprise its board of six members, 50 percent of whom would be disinterested.

N.J.A.C. 6:28-7.2(e)6iii required that each approved private school for the handicapped have a board of directors of at least six members, 50 percent of whom were disinterested parties and the director could serve in a nonvoting capacity.

Social Impact

The proposed amendments are designed to continue and improve the quality of services to educationally handicapped pupils.

Parents of handicapped pupils, handicapped pupils, district boards of education, accredited nonpublic schools and approved private schools for the handicapped will be affected by the changes in a positive way. Children turning age three will be the responsibility of the district boards of education on their third birthday. Autistic pupils will continue to receive special education programs in the programs that currently serve them. Accredited nonpublic schools will continue to have certified special education teachers and may have regular education teachers either be certified or hold the appropriate certification when providing regular education programs to educationally handicapped pupils. Approved private schools will continue to rely on the New Jersey statutes governing corporations.

Economic Impact

Currently, approximately 600 to 800 autistic pupils are served primarily in 15 New Jersey approved private schools for the handicapped under the classifications of neurologically impaired, emotionally disturbed, communication handicapped and multiply handicapped. An increase in State aid will be determined by the difference in the categorical aid factors for these four classifications and the new QEA factor for autistic. Since the factor for autistic (1.84) is higher than that for the other classifications, there will be an increase in State aid to districts. It is not possible to calculate the exact difference since the number of pupils served under the four different classifications is unknown.

There will be increases in cost to districts serving children age three. Children attaining age three will receive preschool programs funded by the district rather than through State funds. The additional costs will be offset by the increase in the State fundings to districts under the QEA and Federal funds available through P.L. 99-457.

Regulatory Flexibility Analysis

The proposed amendments will have minimal reporting, recording or compliance requirements for approximately 15 approved private schools for the handicapped, which are considered small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., serving autistic children in New Jersey.

Programs currently approved will submit an application according to N.J.A.C. 6:28-7.2 requesting approval to change the classifications served.

It is not anticipated that the application requirement to the Division of Special Education will be unduly burdensome. Therefore, no differing compliance requirements are necessary. These changes are necessitated to maintain the Department's regulatory responsibility for the private schools. No capital costs or additional professional services are needed in order to comply with proposed amendments.

The reporting requirements for the boards of directors in approved private schools for the handicapped has been eliminated. This will reduce paperwork requirements as the Department will no longer collect information regarding the composition of board members in those programs.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

6:28-1.1 General requirements

(a)-(d) (No change.)

(e) Each district board of education is responsible for providing a system of free, appropriate special education and related services to its preschool handicapped pupils which shall:

1.-2. (No change.)

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3. Be located in **State approved** facilities [which are approved by the State according to N.J.A.C. 6:22-1 and] **that are** accessible to the handicapped **or in early intervention programs approved according to N.J.A.C. 6:28-10.1**.

4. (No change.)

(f)-(n) (No change.)

6:28-1.3 Definitions

Words and terms, unless otherwise stated in these definitions, when used in this chapter, shall be defined in the same manner as those words and terms used in the Education for All Handicapped Children Act.

. . .

"Pupil age" means the school age of a pupil as defined by the following:

1. "Age three" means the attainment of [chronological age three by December 31 of that school year] **the third birthday**. Children attaining age three [by that date shall be considered age three on July 1 of that school year. Children enrolled in early intervention programs according to N.J.A.C. 6:28-10 attaining the chronological age of three during the school year but after December 31 shall continue to be provided services for the balance of that school year by these programs.] **shall have a free, appropriate public education available to them provided by the district board of education.**

2.-3. (No change.)

. . .

6:28-3.2 Identification

(a)-(c) (No change.)

(d) For a child [who has been enrolled in an early intervention program, who will be age three according to N.J.A.C. 6:28-1.3 in the following school year and] who is identified to the district board of education **at least 90 days** prior to [June 1,] **the attainment of age three according to N.J.A.C. 6:28-1.3,** the district board of education shall obtain parental consent, determine eligibility and, if [appropriate] **the pupil is determined to be eligible**, develop **and make available** an individualized education program. This shall be completed not later than [the opening of school in the following school year] **the date on which the child attains age three**.

(e) For a child who is identified less than 90 days prior to the attainment of age three according to N.J.A.C. 6:28-1.3, the district board of education shall obtain parental consent, determine eligibility and, if eligible, develop and make available an individualized education program according to N.J.A.C. 6:28-2.1(c).

6:28-3.5 Determination of eligibility

(a)-(b) (No change.)

(c) Classification of pupils determined to be eligible for special education and/or related services shall be determined collaboratively by the child study team, parent(s) and, if they choose to participate, the school principal and referring staff members. Classification according to the following definitions shall be based on all evaluations conducted:

1. (No change.)

2. "Autistic" means a pervasive developmental impairment characterized by (c)2i, ii, and iii below. An evaluation by a certified speech correctionist or speech-language specialist and an evaluation by a physician trained in neurodevelopmental assessment is required.

i. Social-emotional and communication development impaired in ways that are not merely predictable from cognitive and/or sensory impairment(s);

ii. Extreme aberrant responses to one or more aspects of the environment, such as insistence on sameness, resistance to change, stereotypic behaviors, lack of responsiveness to others or repetitive movements; and

iii. Onset in infancy or childhood.

Recodify existing 2. through 11. as **3. through 12.** (No change in text.)

6:28-3.7 Reevaluation

(a) A reevaluation and, if the pupil will remain classified, an individualized education program shall be completed within three years of the date of the previous classification. Reevaluation shall be conducted sooner if conditions warrant or the pupil's parent(s) or teacher request the reevaluation.

1. The child study team shall determine which child study team members and/or specialists will conduct the evaluations based upon demonstrated pupil progress in meeting the goals and objectives of the individualized education program. The reevaluation shall include assessment by at least two members of the child study team.

i. For pupils who are auditorily handicapped, in addition to the two required evaluations provided by the child study team, an audiological evaluation and a speech and language assessment according to N.J.A.C. 6:28-3.5(c)1 shall be required.

ii. For pupils who are autistic, in addition to the two required evaluations provided by the child study team, a speech and language assessment and neurodevelopmental assessment according to N.J.A.C. 6:28-3.5(c)2 shall be required.

2.-5. (No change.)

6:28-4.2 Program options

(a) (No change.)

(b) A district board of education shall provide a program for a preschool handicapped pupil in one of the following settings:

1. An approved public or private program;

2. An accredited nonpublic school; or

3. An early intervention program (which is under contract with the Department) in which the child has been enrolled for the balance of the school year in which the child turns age three.

6:28-4.4 Program criteria: special class programs, secondary, vocational and vocational rehabilitation

(a) Special class programs shall meet the following criteria:

1.-5. (No change.)

6. A special class program shall serve pupils who have the same classification. Class sizes shall not exceed the following:

i. (No change.)

ii. Autistic—elementary—six pupils per classroom with a pupil to staff ratio of three to one (classroom aide required when the class size exceeds three);

iii. Autistic—secondary—nine pupils per classroom with a pupil to staff ratio of three to one (two classroom aides required for a class size of nine pupils);

Recodify existing ii through xiv as **iv through xvi.** (No change in text.)

7. With the exception of classes for autistic pupils, [The] **the** above maximum class size may be increased by no more than one-third with the addition of a classroom aide or a second classroom aide where one is already required by obtaining prior written approval from the Department of Education through its county office.

(b)-(d) (No change.)

6:28-6.5 Placement in accredited nonpublic schools which are not specifically approved for the education of handicapped pupils

(a) (No change.)

(b) The Commissioner's consent shall be based upon certification by the district board of education that the following requirements have been met:

1.-4. (No change.)

5. The pupil shall receive a program that meets all the requirements of a thorough and efficient education as defined in N.J.S.A. 18A:7A-5c, d, e, f, and g and as implemented in N.J.A.C. 6:8-2.2, 6:8-4.3(a)3i(3)(A), (B) and (C), 3iii, iv and v, 5ii, [6i and ii,] 6:8-6.1(a), 6:8-7.1(c)1 and (d)1. These requirements shall be met except as the content of the program is modified by the individualized education program based on the educational needs of the pupil or if an exception is granted according to N.J.A.C. 6:28-4.6 or if an exemption is granted according to N.J.A.C. 6:28-3.6(e)5iv.

i. All personnel providing either special education programs according to N.J.A.C. 6:28-4.3 or 4.4 or related services according to N.J.A.C. 6:28-3.8 shall hold the appropriate educational certificate for the position in which they function.

ii. All personnel providing regular education programs shall either hold the appropriate certificate for the position in which they function

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or shall meet the personnel qualification standards of a recognized accrediting authority.

iii. All substitute teachers and aides providing special education and/or related services shall be employed according to N.J.A.C. 6:8-4.3(a)6ii.

6.-11. (No change.)

(c)-(d) (No change.)

6:28-7.1 General requirements

(a)-(f) (No change.)

[(g) When an approved private school has a change in corporate structure or changes the structure of its governing body from that which was approved in the prior year, the composition of the board shall be according to N.J.A.C. 6:28-7.2(e)6iii (1) and (2).]

6:28-7.2 Approval procedures to establish or change a program

(a)-(d) (No change.)

(e) The application for approval to establish or change a program for educationally handicapped pupils shall include, but not be limited to:

1.-5. (No change.)

6. Additionally each private school shall submit:

i. An affidavit that its programs and services for the educationally handicapped are nonsectarian; **and**

ii. A copy of the certificate of incorporation[; and].

[iii. The names of the members of the board of directors. For initiation of a program this board of directors:

(1) Shall be comprised of at least six members, 50 percent of whom shall be disinterested parties and not related to employees of the private school; and

(2) May include the director of the private school in a nonvoting capacity, but no other employee or officer of the school.]

6:28-10.1 General requirements **for early intervention programs serving children between birth and age three**

(a)-(l) (No change to text.)

6:28-10.2 [(Reserved)] **General requirements when district boards of education contract with early intervention programs under contract with the department of education for pupils age three**

(a) When an individualized education program is developed by a district board of education for a child age three who has been enrolled in an early intervention program and it is determined that the district shall provide a free, appropriate public education for that pupil by continuing the program in the early intervention program for the balance of that school year, the following requirements shall apply:

1. The district board of education shall be responsible to ensure that the requirements of N.J.A.C. 6:28-1.1(e) shall be met;

2. A contractual agreement shall be provided between the district board of education and the early intervention program;

3. Personnel shall be appropriately certified; and

4. Applications for exceptions according to N.J.A.C. 6:28-4.6 shall be made whenever necessary.

(b) When the district board of education determines that the child who has been enrolled in the early intervention program requires an extended year program, the district may contract with the early intervention program for the provision of that program.

6:28-11.4 Identification

(a)-(b) (No change.)

(c) For a child [who has been enrolled in an early intervention program, who will be age three according to N.J.A.C. 6:28-1.3 in the following school year and] who is identified to the district board of education **at least 90 days** prior to [June 1] **the attainment of age three according to N.J.A.C. 6:28-1.3**, the district board of education shall obtain parental consent, determine eligibility and, if [appropriate] **the pupil is determined to be eligible**, develop **and make available** an individualized education program. This shall be completed not later than [the opening of school in the following school year] **the date on which the child attains age three.**

(d) For a child who is identified less than 90 days prior to the attainment of age three according to N.J.A.C. 6:28-1.3, the district board of education shall obtain parental consent, determine eligibility and, if eligible, develop and make available an individualized education program according to N.J.A.C. 6:28-2.1(c).

HIGHER EDUCATION

(a)

BOARD OF HIGHER EDUCATION

Auditing and Accounting Standards for County Colleges

Noncredit Courses

Reproposed Amendment: N.J.A.C. 9:4-3.12

Authorized By: Board of Higher Education,
Edward D. Goldberg, Chancellor and Secretary.

Authority: N.J.S.A. 18A:64A-7.

Proposal Number: PRN 1991-181.

Submit comments by May 15, 1991 to:
Brett Lief
Acting Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Board of Higher Education approved the initial noticing of the proposed amendment to the rules regarding noncredit courses at county community colleges (N.J.A.C. 9:4-3.12) on June 15, 1990. The proposed amendment was published in the August 6, 1990 edition of the New Jersey Register at 22 N.J.R. 2254(b). Comments submitted by the colleges raised legitimate concerns which resulted in several modifications intended to add clarity and flexibility to the rule. The revised proposed amendment was approved by the Board of Higher Education on December 12, 1990 and is now being reproposed for noticing in the New Jersey Register.

Currently, N.J.A.C. 9:4-3.12 provides a mechanism for State funding of noncredit courses at county community colleges. Noncredit courses, for purposes of State funding, mean remedial, developmental, general education diploma and adult basic education courses. The Department of Higher Education periodically reviews the certified institutional enrollment reports of county community colleges. A periodic review revealed that several practices in the reporting of enrollment data were either in violation of the county community college noncredit course rules or did not comply with Board of Higher Education policy. These practices included: the charging of tuition for courses which exceeded the Board's maximum limits; the absence of documentation which would indicate the course development costs charged to corporate, private or public agencies; inclusion of contact hours for students enrolled in high school equivalency courses with non-specified sessions in enrollment data; and claims for funding of credit hours partially funded by the New Jersey Department of Education. The reproposed rule standardizes the reporting of noncredit courses. This is essential to the community college audit process.

The reproposed amendment has been strengthened by a clarification of the requirement that all colleges must maintain documentation of tuition, laboratory fees, course development costs and other fees and by the stipulation that tuition for courses offered to business, industry and public agencies be based upon the number of seats reserved by the contracting agency. These clarifications will ensure that tuition for these noncredit courses which are eligible for State funding, are within the maximum levels established by the Board of Higher Education. In addition, flexibility is provided for noncredit courses with non-specified hours, which students complete at their own pace, by permitting the calculation of credit hour enrollment based on weekly student attendance. To qualify for attendance during a particular week, a student must attend a majority of the scheduled or available sessions within that week. This flexibility will assist colleges in providing instructional equipment and materials for nontraditional students during regular instructional hours.

Specifically, the proposed addition at N.J.A.C. 9:4-3.12(g)1 allows colleges to institute noncredit course and/or laboratory fees provided that these fees are clearly differentiated from tuition in promotional material

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and invoices presented to students. It also requires community colleges to maintain for audit purposes documentation of the course, laboratory and other fees charged. This requirement will ensure differentiation of the specific charges and enable the auditors to determine if the colleges are within the maximum tuition levels established by the Board of Higher Education.

The proposed addition at N.J.A.C. 9:4-3.12(g)2 requires that colleges seeking funding for noncredit courses for which course development fees are charged, shall be charged only once unless the course is refined. It also requires colleges to submit to the Department semi-annually a list of courses, clients and developmental costs. This revision will also enable the auditors to monitor compliance with the Board of Higher Education's tuition policy.

The proposed addition at N.J.A.C. 9:4-3.12(g)3 addresses tuition for training courses which are contracted by business, industry or public agencies. The proposed amendment provides that the number of seats contractually reserved by the contracting agency will provide the basis for State support. Finally, N.J.A.C. 9:4-3.12(k) provides that State funding for noncredit courses with unspecified sessions, in which students proceed to learn at their own pace, will be based on student attendance at a majority of scheduled or available class sessions within the week.

Social Impact

The reproposed amendment will clarify the method of recording data regarding noncredit courses at county community colleges. This is essential to the county community college audit process and will standardize the reporting process. This will ensure that the county community colleges comply with the Board of Higher Education maximum tuition limitation policies.

Economic Impact

The proposed amendment will ensure that the tuition charged by county community colleges does not exceed Board of Higher Education maximum limits; students, corporate, private or public agencies receive an itemized list of charges; full-time equivalent support for development costs are charged once unless the course is refined; and standardized calculation of attendance for high school equivalency and other courses with non-specified sessions. These requirements may result in reduced revenues for those county community colleges which have not complied with the community college noncredit course rules or Board of Higher Education maximum tuition policies.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment contains provisions regarding accounting practices at county community colleges.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

9:4-3.12 Noncredit courses

(a)-(f) (No change.)

(g) To be eligible for State funding, noncredit courses as defined in this section shall be in compliance with the Board of Higher Education tuition ceiling currently in effect.

1. Colleges may, as allowed for credit courses, institute course and/or laboratory fees where appropriate, as long as these fees are clearly differentiated from tuition in promotional material and invoices rendered to a student. Documentation of course, laboratory and other fees charged to all clients shall be maintained by the college for audit purposes. Course, laboratory and other fees are not eligible for reimbursement under this section.

2. Colleges requesting State FTE support may charge course development fees. Such fees may be charged once for the development of a given course. Costs for the refinement of a course previously developed and for which fees have been charged are also allowable. All course development costs shall be fully documented as actual course development costs. Colleges shall forward to the Department semi-annual reports reflecting the course, clients, developmental costs and a minimal breakdown of those costs.

3. Tuition for training courses shall be based upon the seats contractually reserved by the contracting agency. In no case, however, shall the state Full-Time Equivalent (FTE) support exceed the number of students actually attending a given course as determined pursuant to N.J.A.C. 9:4-3.14.

(h)-(j) (No change.)

(k) The equivalent credit-hour calculation for a noncredit course shall be based upon only those students who are formally registered and in attendance at the institutional session to be selected by the college for the equivalent credit-hour count. **For noncredit courses with non-specified sessions, funding shall be based on a weekly student attendance. In order to qualify for attendance during any particular week, a student must attend a majority of the scheduled or available class sessions within a week.**

(l) (No change.)

(a)

STUDENT ASSISTANCE BOARD

Tuition Aid Grant Program
Tuition Aid Grant Award Table
Proposed Repeal and New Rule: N.J.A.C. 9:7-3.2

Authorized By: Student Assistance Board, M. Wilma Harris, Chairperson.

Authority: N.J.S.A. 18A:71-47(b) and 18A:71-48.

Proposal Number: PRN 1991-182.

Submit comments by May 15, 1991 to:
Brett E. Lief
Acting Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed repeal and new rule takes the percentage-based method Tuition Aid Grant (TAG) Award Tables out of the current rule and for 1991-92 replaces this award table concept with an explanation of the actual process by which the TAG table is adopted by the Student Assistance Board, the factors determining the award levels for students, and it also includes a requirement that a copy of the final award amounts table be sent to all TAG applicants and institutions of higher education in New Jersey. Even though the academic year TAG table indicating allowable minimum to maximum percentage of tuition ranges in each award cell alleviated some of the delay in the process of adopting the final award amounts and the ability to notify students at the earliest possible date, this method still has its drawbacks. In recent years, because of unanticipated changes in tuition levels, the percentage ranges in some cells were not broad enough and more recently, due to the uncertainty of the current fiscal climate, the ranges would have to be set so broadly that they are approaching the point where they no longer give adequate notice as to award levels. In its stead, the Department decided that the TAG Award Table, as a published rule, should rather explain the process of adoption and determination of award levels with the requirement that all New Jersey institutions and TAG applicants receive a copy of the final award table when it becomes available sometime in July, well in advance of college enrollments. The proposed new rule would also eliminate the delay caused by the need to publish and adopt an amendment to the existing rule each year as tuition levels change throughout the state.

Social Impact

The proposed repeal and new rule provides students and institutions with an explanation of the factors involved in determining the actual award levels of the TAG table as reflected in the various institutional sectors as well as the process for adoption of the table by the Student Assistance Board. It also stipulates that when final award values have been set, all TAG applicants and New Jersey institutions will receive a copy of the table which will be well in advance of college enrollments. Replacing the percentage of tuition range concept table with a summarization of the processes leading to actual award levels and adoption will eliminate any delay in notifications to students of final award amounts in the event unanticipated tuition increase levels occur which may affect a percentage based table, thereby requiring additional public noticing prior to increasing awards. The proposed repeal of the per-

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centage table will continue to allow the Student Assistance Board and the Board of Higher Education to assign increased award amounts to the TAG table in July immediately after the program appropriation and tuition levels for the various college sectors are known and the proposed new rule insures that all applicants and institutions will receive a copy.

Economic Impact

The proposed repeal and new rule continue to provide for the assignment of grant amounts in the various eligibility cells within the recommended appropriation in the Fiscal Year 1992 Budget Request and continued estimated funding through the Federal State Student Incentive Grant Program.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that this proposed repeal and new rule will not impose reporting, recordkeeping, or other compliance requirements on small businesses. The proposed repeal and new rule replaces a percentage-based TAG table with an explanation of the processes for adoption and determining award levels.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

9:7-3.2 Tuition Aid Grant award table

[(a) The value of the grant is related to the tuition charges of the various institutional sectors in New Jersey and the student's ability to pay for educational costs.

1. TUITION AID GRANT (TAG) AWARD TABLE FOR 1989-90
APPROXIMATE TUITION AID GRANT VALUES[1]
NEW JERSEY COLLEGES AND UNIVERSITIES

NJ Eligibility Index (NJEI)	County Colleges	State Colleges	Independent Institutions	Rutgers Univ. & UMDNJ[2]	NJ Inst. of Tech.
	100% of	100% of		100% of	100% of
Under 1500	tuition	tuition	40-50%[3]	tuition	tuition
1500- 2499	85-99%	80-99%	85-99%	85-99%	85-99%
2500- 3499	70-84%	70-79%	75-84%	75-84%	75-84%
3500- 4499	50-69%	60-69%	65-74%	65-74%	65-74%
4500- 5499	Minimum	50-59%	55-64%	50-64%	50-64%
5500- 6499	0	30-49%	45-54%	40-49%	40-49%
6500- 7499	0	Minimum	35-44%	30-39%	30-39%
7500- 8499	0	0	25-34%	20-29%	20-29%
8500- 9499	0	0	15-24%	Minimum	Minimum
9500-10499	0	0	Minimum	0	0
Over 10499	0	0	0	0	0

[1]In accordance with State guidelines, the value of the student's grant may decrease dependent upon appropriated funds, the student's college budget and other financial aid. The student will be notified of any increase in his/her grant if additional funds become available. Percentages listed for NJEI categories 1500 and above represent percentages of the first cell award. For purposes of N.J.A.C. 9:7-3.2, Tuition Aid Grant Award Table, the minimum grant for all institutional sectors shall not exceed $400.00.

[2]Students enrolled in eligible programs at UMDNJ should contact the university's financial aid office for details.

[3]Pursuant to N.J.S.A. 18A:71-47, the maximum award for a student attending an independent institution of higher education is 50 percent of the average tuition normally charged students attending those institutions. The FY 1990 Budget Request contains a recommended $3,700.00 maximum award level in the independent sector for students with an NJEI under 1500.

2. TUITION AID GRANT (TAG) AWARD TABLE FOR 1990-91
APPROXIMATE TUITION AND GRANT VALUES[1]
NEW JERSEY COLLEGES AND UNIVERSITIES

NJ Eligibility Index (NJEI)	County Colleges	State Colleges	Independent Institutions	Rutgers Univ. & UMDNJ[2]	NJ Inst. of Tech.
	100% of	100% of		100% of	100% of
Under 1500	tuition	tuition	40-50%[3]	tuition	tuition
1500- 2499	70-99%	70-99%	75-99%	75-99%	75-99%
2500- 3499	50-75%	60-75%	65-74%	65-80%	65-80%
3500- 4499	35-55%	50-60%	55-64%	55-70%	55-70%
4500- 5499	Minimum	40-50%	45-54%	50-60%	50-60%
5500- 6499	0	25-40%	35-44%	35-50%	35-50%
6500- 7499	0	Minimum	30-34%	25-35%	30-40%
7500- 8499	0	0	20-29%	20-30%	20-30%
8500- 9499	0	0	10-19%	Minimum	Minimum
9500-10499	0	0	Minimum	0	0
Over 10499	0	0	0	0	0

[1]In accordance with State guidelines, the value of the student's grant may decrease dependent upon appropriated funds, the student's college budget and other financial aid. The student will be notified of any increase in his/her grant if additional funds become available. Percentages listed for NJEI categories 1500 and above represent percentages of the first cell award. The award in each subsequent NJEI category above 1500 will continue to decrease in value until the minimum grant is reached in each sector. For purposes of N.J.A.C. 9:7-3.2, Tuition Aid Grant Award Table, the minimum grant for all institutional sectors shall not exceed $400.00.

[2]Students enrolled in eligible programs at UMDNJ should contact the university's financial aid office for details.

[3]Pursuant to N.J.S.A. 18A:71-47, the maximum award for a student attending an independent institution of higher education is 50 percent of the average tuition normally charged students attending those institutions. The FY 1991 Budget Request contains a recommended $4,200.00 maximum award level in the independent sector for students with an NJEI under 1500.]

(a) Prior to each academic year, the Student Assistance Board (SAB) shall adopt a Tuition Aid Grant (TAG) Award Table which shall indicate TAG award values which students attending various institutions of higher education shall be entitled to receive based upon their financial need.

1. The Table shall include an annual minimum grant for all institutional sectors.

(b) The value of the grant shall be related to the tuition charges of the various institutional sectors in New Jersey and the student's ability to pay for educational costs.

(c) The determination of eligibility for an award shall be made pursuant to the provisions of N.J.A.C. 9:7-2.4.

(d) Subsequent to approval of a final TAG Award Table by the SAB and Board of Higher Education (BHE), as required by law, the final TAG Award Table shall be provided to all New Jersey institutions of higher education which enroll students receiving TAG awards and to all individuals having applied for a TAG award for the upcoming academic year. The SAB shall also provide a copy of the final TAG Award Table to any other individual or entity requesting the table.

(e) The value of the student's grant may change dependent upon appropriated funds, the student's college budget and other financial aid. The student will be notified of any change in his or her grant.

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LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS
BOARD OF ARCHITECTS
Fees
Proposed Amendments: N.J.A.C. 13:27-5.8 and 8.15

Authorized By: Board of Architects, Joseph Filippone, President.
Authority: N.J.S.A. 45:3-3.
Proposal Number: PRN 1991-200.

Submit written comments by May 15, 1991 to:
Barbara Hall, Executive Director
Board of Architects
Post Office Box 45001
124 Halsey Street
Newark, New Jersey 07102

The agency proposal follows:

Summary

The State Board of Architects is proposing amendments to N.J.A.C. 13:27-5.8 and N.J.A.C. 13:27-8.15, the fee schedules relating to the licensure of architects and the certification of landscape architects. The amendments represent a general fee increase and are intended to cover increases in investigative and program costs since these fees were last raised approximately seven years ago. The fee increases are necessary to prevent a fiscal loss to the Board, which is required pursuant to N.J.S.A. 45:1-3.2 to cover its expenses.

Amendments are also proposed to reflect a determination of the Division of Consumer Affairs to amend the fee schedules of the professional boards which it regulates in order to accurately and specifically identify the actual elements for which a Board incurs expenses and in order to create within the Division a uniform method of assessing and collecting fees from the professional Boards. In that regard, the format of the fee schedules has been revised and a separate fee has been established in N.J.A.C. 13:27-8.15(a) for certified landscape architects seeking reciprocity.

Finally, N.J.A.C. 13:27-8.15(a)1 has been deleted as obsolete. This subsection refers to the application fee for certification under the grandfather clause of P.L. 1983, c.337, which clause is no longer in effect.

Social Impact

The proposed fee increases, which will affect all applicants for licensure and certification and all individuals currently licensed or certified by the Board, are necessary to enable the Board to discharge its statutory obligations, which include the evaluation of applicants for licensure and certification and the regulation of the practice of architecture and landscape architecture in New Jersey. The new fee schedules will provide the Board with the minimum financial resources to carry on its responsibilities to protect the public health, safety and welfare by ensuring professional competence and the maintenance of high professional standards.

Economic Impact

The proposed fee increases should yield revenues sufficient to cover the rising expenses generated by the Board's many statutory obligations: licensing of architects and certification of landscape architects; investigation of complaints; processing of complaints involving the application of the Building Design Services Act, P.L. 1989, c.275; and initiation and prosecution of disciplinary actions. The amendments will have a direct economic impact upon all applicants for licensure and certification and upon currently licensed architects and certified landscape architects. However, because the Board has not increased its fees in approximately seven years, the financial impact is in line with the general rise in the cost of living. It is unlikely that the amendments would necessitate an increase in fees charged to the consumer, since as a business expense the proposed new fees are reasonable. As stated, the proposed amendments are necessary to prevent a fiscal loss to the Board, which is required by statute to cover its expenses. In accordance with N.J.S.A. 45:1-3.2, the sums to be raised are estimated not to exceed the amount required.

Regulatory Flexibility Analysis

The New Jersey State Board of Architects licenses and certifies over 6,500 individual architects and landscape architects. It is impossible to determine the specific number of small businesses, as defined in the Regulatory Flexiblity Act, N.J.S.A. 52:14B-16 et seq., since the Board licenses and certifies individuals and not entities.

Compliance requirements consist of paying increased licensing and certification fees in a timely manner. There are no reporting or recordkeeping requirements, and no professional services are needed. The fee increases are necessary to enable the Board to avoid operating at a loss. Since the fees have been set at the lowest amount that will cover the Board's operating expenses, the intent of the Regulatory Flexibility Act to minimize adverse economic impact has been implemented.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

13:27-5.8 Fees

(a) The fees in this section shall be charged by the Board of Architects[:]. **Unless otherwise provided herein, all fees are nonrefundable.**

(b) [Applicants for examinations or license shall pay a fee of $25.00 for processing their applications.]

(c) The fees for the licensing examination are as follows:

1. (No change.)

[2. If awarded a certificate of license a further charge of $30.00 is made for issuing it, and of $25.00 for a seal press and filing it with the Secretary of State. This provides registration to the end of the licensing period in which the license is issued.

(d) Applicants already licensed by another state shall pay an application fee of $25.00. If awarded a certificate of license, the charge is $75.00 plus $25.00 for a seal press and filing with the Secretary of State. This provides registration to the end of the licensing period in which the license is issued.

(e) The fee for reissuing a certificate of license shall be $15.00.

(f) The renewal registration fee shall be $100.00, payable during the month of July on a biennial basis. When registrations occur within the second year of a biennial period, the fee shall be $50.00 for that single year or portion thereof, and thereafter $100.00 for a full biennial period.

(g) The charge for reinstatement of certificate of license shall be $50.00 if applied for within two years or forfeiture or cancellation. In addition thereto, the applicant shall pay the biennial registration fee or part thereof as the circumstances may require.

(h) The charge for the new seal press shall be $25.00.

(i) The fee for transmittal of grades, or certification as to registration and status thereof, to other State boards, or to the National Council of Architectural Registration Boards, or to governmental agencies or governments, shall be $15.00.

(j) The charge for late payment of biennial registration fees between August 1 and the date of forfeiture shall be $10.00.]

(d) The following fees shall be charged by the Board:

1. Application Fee	**$ 50.00**
2. Initial License Fee (including original seal press)	
i. During the first year of a biennial renewal period	**160.00**
ii. During the second year of a biennial renewal period	**80.00**
3. Reciprocity Fee (plus initial license fee and application fee)	**75.00**
4. Biennial Renewal Fee	**160.00**
5. Duplicate wall certificate	**25.00**
6. Reinstatement Fee	**100.00**
7. Replacement seal press	**40.00**
8. Verification of Licensure	**30.00**
9. Late Fee	**50.00**

[(k)]**(e)** A charge of [$8.00] **$15.00** shall be required for a copy of the "Roster of Architects," except that it shall be issued free to State, county and municipal government agencies and to all architects listed therein.

[(l)]**(f)** (No change in text.)

13:27-8.15 Fees

(a) The following fees shall be charged by the Board of Architects for Landscape Architect Certification matters. Unless otherwise provided herein, all fees are nonrefundable.

[1. Application for certification under the grandfather clause of L.1983, c.337, section 17 (N.J.S.A. 45:3A-14): $50.00. If an applicant under the grandfather clause is found not qualified for certification

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under that provision, the $50.00 fee may be applied toward the examination fee in (a)3 below.]

[2. Application to sit for examination: $100.00]

1. Application Fee: $125.00

[3.]**2.** Examination fee: Such fee as is charged by the Council of Landscape Architectural Review Boards (CLARB) for the Uniform National Examination.

i. The fee for the local portion of the examination, as established by the Board, shall be $5.00 **for both New Jersey residents and individuals seeking reciprocity.**

[4. License fee for newly certified landscape architects (New Jersey residents), including seal and certificate: $140.00.

5. License fee for newly certified landscape architects (non-New Jersey residents), including seal and certificates: $140.00.

i. For those seeking reciprocity, the fee for the local portion of the examination, as established by the Board, shall be $5.00.

6. The fee for biennial renewal of certification shall be $100.00.

7. The fee for reinstatement of certification shall be $50.00 in addition to the fee for biennial renewal of certification.

8. A fee for late registration: $10.00.

9. The fee for reissuing a certificate to any certified landscape architect who attests that the original certificate has been lost, mislaid or destroyed shall be $15.00.

10. The fee for reissuing a seal to any certified landscape architect who attests that the original has been lost, mislaid or destroyed shall be $25.00.

11. The fee for transmittal of an applicant or certificate holder's examination grades to another state shall be $15.00.

12. The fee for a roster of certified landscape architects shall be $8.00.]

3. Initial Certification Fee (including seal press)

i. During the first year of a biennial renewal period $160.00

ii. During the second year of a biennial renewal period $ 80.00

4. Reciprocity Fee $ 75.00

plus initial certification fee and application fee

5. Biennial Renewal Fee $160.00

6. Reinstatement Fee $100.00

7. Late registration fee $ 50.00

8. Duplicate certificate fee $ 25.00

9. Replacement seal press $ 40.00

10. Verification of Certification $ 25.00

11. Roster of certified landscape architects $ 15.00

(a)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF ACCOUNTANCY

Reexamination

Proposed Amendment: N.J.A.C. 13:29-1.7

Authorized By: State Board of Accountancy, John J. Meade, Executive Director.

Authority: N.J.S.A. 45:2B-6(g).

Proposal Number: PRN 1991-178.

Submit written comments by May 15, 1991 to:
John J. Meade, Executive Director
State Board of Accountancy
1207 Raymond Boulevard
Newark, NJ 07102

The agency proposal follows:

Summary

The State Board of Accountancy has for some time been concerned about the relatively low examination pass rate of candidates for licensure in New Jersey. At the same time, the Board opposes any lowering of standards for entry into this demanding profession. In an effort to reconcile these concerns, the Board is proposing amendments to expand a candidate's opportunity to pass the four-part exam.

First, under the current rule, a candidate who fails to pass all subjects but who receives a passing grade in two or more subjects, or in accounting practice alone, receives conditional credit for the subjects passed only if he or she attains an average grade of 50 for the subjects failed. The proposed amendment deletes the latter proviso, allowing the candidate to receive conditional credit for the passed subjects no matter what his or her grades may be in the failed subjects. However, the grade which must be attained in a subject in order to pass remains at the present level, 75.

Second, the proposed amendment allows for 10 examination tries following the first examination at which conditional credit was earned, rather than the present six. This gives the candidate four extra opportunities—in effect, two more years—to pass all four parts of the exam.

To comport with the above changes, the time for commencement of conditional credit has been updated to May of 1991.

Social Impact

The proposed amendment will be of major benefit to applicants for licensure because it gives them a better chance eventually to pass the licensing examination. At present, an applicant loses conditional credit for a passed subject if he or she attains an average of less than 50 in subjects not passed. Under the amendment, that limitation is eliminated and the applicant may, upon receiving a passing grade in two or more subjects, or in accounting practice alone, "bank" a pass in any of the four subjects regardless of the grades received in the failed subjects. Furthermore, with the additional four tries now permitted, a candidate will enjoy an extra two years of opportunity to pass the examination. A degree of benefit may also be felt by potential employers looking for additions to their staffs. Accountants continue to be in great demand and the field is fully-employed, with shortages in some areas. If more applicants achieve licensure because of these expanded opportunities to pass the examination, the number of licensees available for employment will increase.

Economic Impact

There may be some positive economic impact for a few applicants who, because of the deletion of reference to grades attained in subjects not passed, pass the examination sooner than under the present rule; they will be licensed and enabled to start work at an earlier time.

Regulatory Flexibility Statement

The proposed amendment affects only individual applicants for licensure and does not impact upon any small business, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. A regulatory flexibility analysis is therefore not required.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

13:29-1.7 Application for reexamination

(a) (No change.)

(b) Rules on conditional credit are as follows:

1. (No change.)

2. A candidate who fails to pass all subjects, but who receives a passing grade **of 75 or more** in two or more subjects, or in accounting practice alone, shall receive conditional credit for [such] **each** subject[s] **passed.** [provided the candidate attains an average grade of 50 for the subjects failed. This minimum grade requirement is waived if three subjects are passed at a single sitting.]

3. To add to conditional status, the candidate must attain a grade of 75 or more in the subjects passed [and an average grade of 50 in all subjects not passed. While an average grade of less than 50 prevents the candidate from adding to this conditional status, it alone does not remove or cancel conditional status previously attained].

4. In the event that a candidate fails to qualify in all examined subjects in accordance with (b) 2 and 3 above during the [six] **10** examinations immediately following the first examination at which conditional credit was earned, the candidate shall forfeit all conditional credit, shall revert to the status of a new applicant at the next succeeding examination for which he or she sits, and shall be required to write the entire examination therefor.

5.-6. (No change.)

7. The conditional credit provided for in this rule shall be deemed to have commenced with the examination administered in [November 1983] **May 1991.**

8. (No change.)

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(a)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF ACCOUNTANCY

Fees

Proposed Amendments: N.J.A.C. 13:29-1.8, 1.11, 1.12, 1.13 and 2.3

Authorized By: State Board of Accountancy, John J. Meade, Executive Director.

Authority: N.J.S.A. 45:2B-6(g) and 45:2B-35.

Proposal Number: PRN 1991-184.

Submit written comments by May 15, 1991 to:
John J. Meade, Executive Director
State Board of Accountancy
Post Office Box 45000
Newark, New Jersey 07102

The agency proposal follows:

Summary

In order to cover increased investigative, examination and program costs associated with the administration of the State Board of Accountancy, the Board is proposing to increase its examination, reexamination, endorsement and biennial registration fees as set forth in N.J.A.C. 13:29-1.13. The Board is also proposing to amend the fee for a public school accountant's license as set forth in N.J.A.C. 13:29-1.12. These fee increases are necessary to prevent a fiscal loss to the Board, which is required pursuant to N.J.S.A. 45:1-3.2 to cover its expenses.

Amendments are also proposed to reflect a determination of the Division of Consumer Affairs to amend the fee schedules of the professional boards which it regulates in order to accurately and specifically identify the actual elements for which a Board incurs expenses and in order to create within the Division a uniform method of assessing and collecting fees from the professional Boards. Specifically, a separate application fee has been established; previously, application fees for both certified public accountants and registered municipal accountants were included with the examination fees. In addition, these amendments designate an initial license fee and pro-rates that amount on an annual basis, and amendments to N.J.A.C. 13:29-1.8 and 1.11 reflect these changes. The amendments also establish two new fees, a $50.00 late renewal fee and a $150.00 license reinstatement fee, and amendments to N.J.A.C. 13:29-1.11 and 2.3 have been made to explain how and when these fees will be assessed.

Social Impact

The proposed fee increases, which will affect all applicants, current licensees and potential licensees of the State Board of Accountancy, are necessary to enable the Board to discharge its statutory obligations, which include evaluating applicants for licensure and regulating the accounting profession (including overseeing the Quality Enhancement Program and ensuring compliance with continuing professional education requirements). The new fee schedule will provide the Board with the minimum financial resources to carry on its responsibilities to protect the public health, safety and welfare by ensuring professional competence and the maintenance of high professional standards.

Economic Impact

The proposed fee increases will have an impact upon all applicants for licensure and all Board licensees. However, because the Board has not increased its fees since they were originally established in 1978, the financial impact upon applicants and licensees is in line with the general rise in the cost of living. It is unlikely that the proposed fee schedule would necessitate an increase in fees charged to the consumer, since as a business expense these fees are reasonable. As stated, an increase in fees is necessary to prevent a fiscal loss to the Board, which is required pursuant to N.J.S.A. 45:1-3.2 to cover its expenses.

Regulatory Flexibility Analysis

The Board of Accountancy currently licenses approximately 1,000 accounting entities, 16,200 certified public accountants, 1,500 public accountants, 225 municipal accountants and 705 school accountants. It is estimated that the majority of the 1,000 accounting entities would be categorized as "small businesses" under the criteria of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Compliance requirements consist of paying increased licensing and examination fees in a timely manner. There are no reporting or recordkeeping requirements, and no professional services are needed. The fee increases are necessary to enable the Board to avoid operating at a loss. Since the fees have been set at the lowest amount that will cover the Board's operating expenses, the intent of the Regulatory Flexibility Act to minimize adverse economic impact has been implemented.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

13:29-1.8 Applications for certificate by endorsement

(a) Applications for a certificate by endorsement shall be accompanied by the following items:

1. The [fee of $100.00.] **endorsement, initial license and application fees as set forth in N.J.A.C. 13:29-1.13;**

2.-3. (No change.)

13:29-1.11 Successful applicant

(a) Applicants who satisfy the requirements of this subchapter shall pay [a fee of $14.00 which reflects the cost of the issuance of a certified public accountant's certificate and of a character investigation by the State Police] **the initial license fee as set forth in N.J.A.C. 13:29-1.13.**

(b) (No change.)

(c) A Certified Public Accountant shall renew his **or her** license for a period of two years from the last expiration date. [A Certified Public Accountant who fails to timely renew his certificate shall have it declared forfeited. When the Certificate holder seeks to renew a certificate which has been declared forfeited the Board may reinstate his certificate provided he pay the fee for the current registration period in addition to a reinstatement fee set by the Board.] **A late renewal fee shall be charged for any renewal application received by the Board within 60 days after the applicable biennial registration date. After the 60th day, the Board may consider the license forfeited. Thereafter, the licensee shall be required to apply for reinstatement and to pay the reinstatement fee in addition to the fee for the current registration period.**

13:29-1.12 Public School Accountant's license

The holder of a certificate as a Certified Public Accountant or registered municipal accountant shall be granted a Public School Accountant's license upon application to the Board, and the payment of a [$5.00] **$50.00** fee for a period of [one year] **two years.**

13:29-1.13 Fees

(a) Fees for original applications, examinations, reexaminations and renewals, for certified public accountants, public accountants, corporations, partnerships, professional corporations, and for certified public accountants' license by endorsement are as follows:

1. Application fee: $75.00;

[1.]**2.** [Original application, examination] **Examination** fee, certified public accountant: [$100.00] **$125.00;**

[2.]**3.** Reexamination fee, all subjects repeated, certified public accountant: [$75.00] **$125.00;**

[3.]**4.** Reexamination fee for any one, two, or three subjects, certified public accountant: [$60.00] **$100.00;**

[4.]**5.** [Original application, examination] **Examination** fee, registered municipal accountant: $100.00;

[5.]**6.** Reexamination fee, registered municipal accountant: [$60.00] **$100.00;**

[6. Original application, public accountant: $60.00;]

7. [Original application, endorsement] **Endorsement** as certified public accountant: $100.00 **plus the application fee as set forth in (a)1 above;**

8. Initial license fee for certified public accountant, municipal accountant, corporations, partnerships, professional corporations:

i. During the first year of a biennial registration period: $80.00;

ii. During the second year of a biennial registration period: $40.00;

[8.]**9.** Biennial registration [or any portion thereof] for certified public accountant, public accountant, municipal accountant, corporations, partnerships, professional corporations: [$40.00] **$80.00;**

10. Reinstatement of license: $150.00;

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11. Late renewal fee: $50.00.

(b) (No change.)

13:29-2.3 Licenses

(a) [When the holder of a Registered Municipal Accountant's license seeks to renew a license which has expired, the Board may reinstate his license, provided he pays the fee for the current registration period in addition to a reinstatement fee set by the Board.] **The holder of a Registered Municipal Accountant's license shall renew the license for a period of two years from the last expiration date. A late renewal fee shall be charged for any renewal application received by the Board within 60 days after the applicable biennial registration date. After the 60th day, the Board may consider the license forfeited. Thereafter, the licensee shall be required to apply for reinstatement and to pay the reinstatement fee in addition to the fee for the current registration period.**

(b) (No change.)

(a)

DIVISION OF CONSUMER AFFAIRS
BOARD OF EXAMINERS OF MASTER PLUMBERS
Licensed Master Plumber's Scope of Practice
Proposed Amendment: N.J.A.C. 13:32-1.8

Authorized By: Board of Examiners of Master Plumbers, Christine DeGregorio, Executive Director.

Authority: N.J.S.A. 45:14C-7.

Proposal Number: PRN 1991-176.

Submit written comments by May 15, 1991 to:
Christine DeGregorio, Executive Director
Board of Examiners of Master Plumbers
1207 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

This proposal results from a request by the Department of Community Affairs to clarify those activities which are restricted to a licensed master plumber's scope of practice and those activities not within that ambit. The Board of Examiners of Master Plumbers is therefore proposing new subsection N.J.A.C. 13:32-1.8(d) and (e) for the guidance of its licensees, local building officials, building contractors and laborers. The Board is also proposing an amendment to N.J.A.C. 13:32-1.8(a) for clarification purposes.

Proposed N.J.A.C. 13:32-1.8(d) is added in order to set forth examples of activities which require the supervision of a licensed master plumber and impression of the licensee's seal. These examples are: (1) all plumbing within any structure intended for use by individuals or the public or offered for sale or lease to the public or within a structure presently in such use; (2) the installation, maintenance, alteration, repair or removal of a backflow preventer valve; and (3) the installation or removal of sewer and water caps on piping within or attached to any structure being demolished (with certain exemptions).

Proposed N.J.A.C. 13:32-1.8(e) sets forth examples of activities which do not require the supervision or seal of a licensed master plumber. These examples are: (1) the installation, maintenance repair, replacement or removal of gas, hydraulic, or fire suppression piping; and (2) plumbing work performed by a homeowner on his or her single-family residence.

The Board is also proposing an amendment to that portion of N.J.A.C. 13:32-1.8(a) which requires the plumbing seal to be used exclusively by the State-licensed master plumber in the conduct of his practice. Additional language has been added to clarify that a plumber's practice includes any service as a bona fide representative.

Social Impact

Proposed N.J.A.C. 13:32-1.8(d) and (e) will impact positively on master plumbers, local building officials, contractors, and laborers in that these provisions will provide for those groups examples of activities which constitute the practice of plumbing and require the supervision and seal of a licensed master plumber. Uncertainty over several important activities has been removed; this will simplify and facilitate the job of the local plumbing inspector. Most important, consumers will be assured that properly qualified practitioners are supervising plumbing work. The provisions will impact negatively on those contractors, laborers or other individuals who may have mistakenly performed activities which are now clarified to be within the practice of plumbing; they will no longer be permitted to continue.

The amendment to N.J.A.C. 13:32-1.8(a) will have no impact upon licensees or consumers since it merely clarifies that the conduct of a plumber's practice includes service as a bona fide representative.

Economic Impact

Proposed N.J.A.C. 13:32-1.8(d) and (e) will have some economic impact on building contractors who use non-licensed personnel for plumbing jobs. However, the number of such persons cannot be ascertained with certainty, nor the amount of any increased costs. The listing of types of activities which constitute the practice of plumbing is expected, however, to save time for local plumbing inspectors, and therefore money for taxpayers; clarifications in the proposed subsections should facilitate the local building permit process.

The amendment to N.J.A.C. 13:32-1.8(a) will have no economic impact since it merely clarifies that a plumber's practice includes service as a bona fide representative.

Regulatory Flexibility Analysis

The proposed amendments will impact upon the approximately 7,000 licensees of the Board of Master Plumbers as well as upon building contractors, almost all of them small businesses under the definition in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Proposed N.J.A.C. 13:32-1.8(d) and (e) add no reporting or recordkeeping requirements and no professional services are needed to comply. No exemption for small businesses is possible because of the clarifying nature of the rule; the Board's intent is to provide guidance as to the types of activities which are restricted exclusively to licensed master plumbers. The Board also hopes to eliminate such uncertainty on the part of building inspectors and the construction industry.

Adverse impact upon small construction businesses will result only if those contractors have mistakenly allowed laborers to do jobs now clearly identified as plumbing. Higher costs for the employment of a licensed master plumber may result in some cases. However, the statutory mandate of the Board of Master Plumbers is to protect the public health, safety and welfare by maintaining high standards of competence and performance. The Board believes that the proposed new subsections further that purpose.

There will be no new reporting, recordkeeping or other compliance requirements, nor will there be initial capital costs or annual costs of compliance, in connection with the amendment to N.J.A.C. 13:32-1.8(a); this amendment merely clarifies that a plumber's practice includes service as a bona fide representative.

Full text of the proposal follows (additions indicated in boldface **thus**):

13:32-1.8 Requirement of pressure seal defined

(a) At the time of the issuance of the license or as soon thereafter as deemed appropriate, the Board of Examiners of Master Plumbers shall furnish a seal to every State-licensed master plumber. The cost of the seal shall be paid for by the State-licensed master plumber to whom it is issued. The seal shall be used exclusively by the State-licensed master plumber in the conduct of his practice **including service as a bona fide representative consistent with N.J.A.C. 13:32-1.5**. A licensee who willfully or negligently allows an unlicensed and unauthorized person to use his seal shall be subject to such penalties and sanctions as shall be imposed by the Board pursuant to authority granted by N.J.S.A. 45:14C-1 and N.J.S.A. 45:1-14 et seq. The State-licensed master plumber is required to impress the said seal upon all applications for plumbing permits by the appropriate duly licensed State inspection agency.

(b)-(c) (No change.)

(d) The practice of plumbing shall include, but not be limited to, the following activities. When any person engages in any such activity the supervision of a licensed master plumber and the impression of the licensee's seal on the plumbing permit is required.

1. All plumbing within any structure that is intended for use by individuals or the public or is offered for sale or lease to the public, or within a structure that is presently in such use;

2. The installation, maintenance, alteration, repair or removal of a back flow preventer valve unless exempt as set forth in (e) below; and

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3. The installation or removal of sewer and water caps on piping within or attached to any structure that is being demolished, unless exempt as set forth in (e) below.

(e) The following are examples of activities which do not require the supervision or seal of a licensed master plumber:

1. Installation, maintenance, repair, replacement or removal of gas, hydraulic, or fire suppression piping; and

2. Plumbing work performed by a single-family homeowner on his or her own residence.

(a)

DIVISION OF CONSUMER AFFAIRS BOARD OF MEDICAL EXAMINERS

Notice of Public Hearing
Professional Practice Structure
Professional Fees and Investments, Prohibition of Kickbacks
Proposed Repeal: N.J.A.C. 13:35-6.4
Proposed New Rules: N.J.A.C. 13:35-6.16 and 6.17

Take notice that the New Jersey State Board of Medical Examiners will conduct a public hearing on proposed new rules concerning professional practice structure, professional fees and investments, and prohibition of kickbacks. The proposed rules were published in the January 22, 1991 New Jersey Register at 23 N.J.R. 161(a). As stated in the proposal, the two rules are intended to aid the public and Board licensees in recognizing ethical forms of professional practice and providing assurance of quality control in the variety of health care settings which have proliferated in recent years and in which Board licensees sometimes have direct or indirect beneficial monetary interests.

The public hearing will be held on Wednesday, May 29, 1991 at 10:00 A.M. at the Richard J. Hughes Justice Complex, 4th Floor, Conference Center, Trenton, New Jersey.

Persons wishing to speak at this hearing should provide written notice to the Board no later than May 17, 1991. Notices should be sent to:

Charles A. Janousek, Executive Director
State Board of Medical Examiners
28 West State Street—Room 602
Trenton, New Jersey 08608

So that the Board may determine the sequence and identity of speakers who will provide it with relevant, non-cumulative comments and data, the notice must include a synopsis of the proposed statement and must specify the numerical section of the rule to which the statement relates.

The hearing will be conducted in accordance with the provisions of N.J.S.A. 52:14B-4(g).

(b)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF MORTUARY SCIENCE

Fees
Proposed Amendment: N.J.A.C. 13:36-1.6

Authorized By: State Board of Mortuary Science, Maurice W. McQuade, Executive Director.
Authority: N.J.S.A. 45:7-38 and 45:1-3.2.
Proposal Number: PRN 1991-185.

Submit written comments by May 15, 1991 to:

Maurice W. McQuade, Executive Director
Board of Mortuary Science
Post Office Box 45009
Newark, New Jersey 07102

The agency proposal follows:

Summary

The Board of Mortuary Science is proposing a general increase in its fee schedule, N.J.A.C. 13:36-1.6, in order to cover increased investigative, examination and program costs associated with the administration of the Board. These fee increases are necessary to prevent a fiscal loss to the Board, which is required pursuant to N.J.S.A. 45:1-3.2 to cover its expenses.

Amendments are also proposed to reflect a determination of the Division of Consumer Affairs to amend the fee schedules of the professional boards which it regulates in order to accurately and specifically identify the actual elements for which a board incurs expenses and in order to create within the Division a uniform method of assessing and collecting fees from the professional boards. In that regard, certain fees have been renamed for clarification purposes: the certification fee has been renamed "verification of licensure"; the fee for new licenses has been renamed "initial license fee"; and the revival fee for lapsed licenses has been renamed "reinstatement fee." This proposal also designates an initial certificate of registration fee for a mortuary and pro-rates that amount on an annual basis. In addition, two new fees have been established, a $50.00 application fee and a $100.00 late renewal fee. The late renewal fee must accompany applications received within 60 days of the biennial renewal deadline. The licensure reexamination fee and the intern reregistration fee have been deleted from the fee schedule since these fees are and will remain the same as the licensure examination and intern registration fees, respectively.

Social Impact

Pursuant to N.J.S.A. 45:7-33 et seq., the Board of Mortuary Science is charged with the obligation of administering and supervising the practice of mortuary science and the practice of embalming and funeral directing. The Board's administrative responsibilities under the statute include evaluating applicants for licensure, administering examinations, investigating complaints and initiating appropriate disciplinary and enforcement actions. The new fee schedule, which will affect all current and potential licensees, will allow the Board to continue to protect the public health, safety and welfare by ensuring professional competence and the maintenance of high professional standards.

Economic Impact

The proposed amendment to the Board's fee schedule will impact upon all applicants for licensure and all Board licensees in that they will be required to pay increased licensing fees. However, higher expenses of the Board necessitate the proposed amendments. The fee increases will prevent a fiscal loss to the Board, which is required pursuant to N.J.S.A. 45:1-3.2 to cover its expenses. It is unlikely that the proposed fee schedule would necessitate an increase in fees charged to the consumer, since as a business expense these fees are reasonable.

Regulatory Flexibility Analysis

The proposed amendment to N.J.A.C. 13:36-1.6 will apply to all 1,850 licensees of the Board of Mortuary Science and to all of the estimated 745 currently licensed funeral establishments. The Board estimates that all of the licensed funeral establishments would be categorized as "small businesses" under the criteria of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Compliance requirements consist of paying increased licensing and examination fees in a timely manner. There are no reporting or recordkeeping requirements, and no professional services are needed. The fee increases are necessary to enable the Board to avoid operating at a loss. Since the fees have been set at the lowest amount that will cover the Board's operating expenses, the intent of the Regulatory Flexibility Act to minimize adverse economic impact has been implemented.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

13:36-1.6 Fees and charges

(a) There shall be paid to the State Board of Mortuary Science the following fees:

[1. Certification fee ..... $ 25.00;]

1. Application fee ..... $ 50.00

2. Initial license fee:

i. During the first year of a biennial renewal period 170.00

ii. During the second year of a biennial renewal period 85.00

3. Initial certificate of registration for a mortuary:

i. During the first year of a biennial renewal period 350.00

ii. During the second year of a biennial renewal period 175.00

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[2.]**4.** Licensure examination fee ..... [$100.00;] **125.00**
[3. Licensure reexamination fee ..... $100.00;]
[4.]**5.** Practical examination fee ..... [$ 50.00;] **75.00**
[5.]**6.** Intern registration fee ..... [$ 50.00;] **75.00**
[6. Intern reregistration fee ..... $ 25.00;]
7. New installation inspection fee ..... [$100.00;] **150.00**
[8. New licenses (biennial) ..... $100.00;]
[9. New licenses in second half of biennial period .. $ 50.00;]
[10.]**8.** Rules and regulations ..... [$ 1.00;] **5.00**
[11.]**9.** Biennial license renewal fees:
i. Practitioner ..... [100.00;] **170.00**
ii. Embalmer ..... [$100.00;] **170.00**
iii. Funeral director ..... [$100.00;] **170.00**
[iv. Revival fee for lapsed license plus current biennial license renewal fee ..... $75.00]
[v.]**iv.** Mortuary certificate of registration ..... [$220.00] **350.00**
v. Late renewal fee 100.00
[12.] **10.** Change of manager registration fee ..... [25.00;] **35.00**
[13.]**11.** Funeral home name change fee ..... [$25.00;] **40.00**
[14.]**12.** Duplicate license [card] fee ..... [$ 10.00;] **25.00**
[15.]**13.** Replacement, embossed registration certificate fee ..... [$ 10.00;] **25.00**
14. Reinstatement fee plus initial license fee 150.00
15. Verification of licensure 25.00

(a)

DIVISION OF CONSUMER AFFAIRS
BOARD OF OPTOMETRISTS
Fees
Proposed Amendments: N.J.A.C. 13:38-5.1
Proposed Repeal: N.J.A.C. 13:38-3.6

Authorized By: Board of Optometrists, Susan H. Gartland, Executive Director.
Authority: N.J.S.A. 45:1-3.2 and 45:12-4.
Proposal Number: PRN 1991-186.

Submit written comments by May 15, 1991 to:
Susan H. Gartland, Executive Director
Board of Optometrists
P.O. Box 45012
Newark, New Jersey 10101

The agency proposal follows:

Summary

In order to cover the increased investigative, administrative and program costs incurred by the State Board of Optometrists, the Board is proposing to amend the fee schedule as set forth in N.J.A.C. 13:38-5.1 to increase the fees for biennial registration, branch office certificates, change of address, late registration and letters of certification. These fee increases are necessary to prevent a fiscal loss to the Board which is required pursuant to N.J.S.A. 45:1-3.2 to meet its expenses.

Amendments are also proposed to reflect a determination of the Division of Consumer Affairs to amend the fee schedules of the professional boards which it regulates in order to accurately and specifically identify the actual elements for which a board incurs expenses and in order to create within the Division a uniform method of assessing and collecting fees from the professional boards. Specifically, a separate application fee has been established. Previously, the application fee for the examination for licensure administered by the Board included the fee for applying for a license. References to examination applications have been deleted since the Board no longer collects fees for examinations which are now administered by NERCOATS. In addition, this proposal designates an initial license fee and an initial branch office certificate fee and pro-rates the amounts for each on an annual basis. The fee to transfer from non-active to active status has similarly been pro-rated on an annual basis.

This proposal also establishes two new fees: a $75.00 endorsement fee to review out-of-State credentials for individuals seeking reciprocity and a $200.00 license reinstatement fee. The fee for a wall certificate for new registrants has been eliminated.

The Board proposes the deletion of N.J.A.C. 13:38-3.6, duplicate registration certificates. The fees for duplicate certificates are included in the proposed amendment to N.J.A.C. 13:38-5.1, thus making this section unnecessary.

Social Impact

The proposed fee increases, which will affect all current and potential licensees of the Board of Optometrists, are necessary to enable the Board to discharge its statutory obligations, which include the evaluation of applicants for licensure and the regulation of the practice of optometry (including investigation of complaints and initiation of appropriate disciplinary and enforcement actions). The new fee schedule will provide the Board with the minimum financial resources to carry on its responsibilities to protect the public health, safety and welfare by ensuring professional competence and the maintenance of high professional standards.

Economic Impact

The proposed fee increases should yield revenues sufficient to cover the rising expenses generated by the Board's many statutory obligations: issuance of licenses; investigation of complaints; initiation and prosecution of disciplinary actions; and addressing issues relevant to the profession. The amendment will have a direct economic impact on Board licensees and, to the extent the proposed fee increases may be passed along to the patient as a cost of doing business, may have an indirect economic impact on consumers. The Board points out, however, that the fees proposed to be amended hereunder have not been increased in over five years and that these increases are necessary to prevent a fiscal loss to the Board, which is required by statute to cover its expenses. In accordance with N.J.S.A. 45:1-3.2, the sums to be raised are estimated not to exceed the amount required.

Regulatory Flexibility Analysis

If, for the purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., optometrists are deemed "small business" within the meaning of the statute, the following statements are applicable.

The Board of Optometrists currently licenses approximately 2,200 individuals, 1,000 of whom have "non-active" status. The proposed amendments, which constitute a general increase in the Board's fee schedule, do not involve any reporting or recordkeeping nor do they necessitate the retention of professional services for compliance. Rather, compliance requirements consist of paying increased licensing fees according to the new schedule. The fee increases are necessary to enable the Board to avoid operating at a loss. Since the fees have been set at the lowest amount that will cover the Board's operating expenses, the intent of the Regulatory Flexibility Act to minimize adverse economic impact has been implemented.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

13:38-3.6 [Duplicate registration certificates] **(Reserved)**

[The Board will issue a duplicate certificate of registration when it shall be certified to the Board that the original has been lost or destroyed. The fee required will be $10.00.]

13:38-5.1 General provisions

The following fees shall be charged by the Board:

1. Application fee: $125.00;
2. Initial license fee:
i. During the first year of a biennial renewal period: $250.00;
ii. During the second year of a biennial renewal period: $125.00;
[1.]**3.** Biennial renewal fee—active certificate: [$100.00]**$250.00;**

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[2.]**4.** Biennial renewal fee—non-active certificate: [$70.00]**$100.00;**
5. Initial branch office certificate:
i. During the first year of a biennial renewal period: $250.00;
ii. During the second year of a biennial renewal period: $125.00;
[3.]**6.** Biennial renewal fee—branch office certificate: [$200.00]**$250.00;**
[4.]**7.** Change of address fee—active or non-active: [$15.00]**$25.00;**
[5.]**8.** Transfer fee—non-active to active: [$50.00;]
i. During the first year of a biennial renewal period: $150.00;
ii. During the second year of a biennial renewal period: $75.00;
[6. Application for examination: $225.00;]
[7. Application for re-examination: $125.00;]
[8. New branch office certificate: $100.00;]
9. Penalty for late renewal of certificate: [$100.00]**$200.00;**
[10. Certificate by endorsement—Reciprocity: $200.00;]
10. Endorsement fee: $75.00;
11. Duplicate wall certificate: $25.00;
[12. Wall certificate—new registrants: $100.00;]
[13.]**12.** Letter of certification:
i. License: [$25.00]**$40.00;**
ii. Continuing education credit: [$25.00]**$50.00;**
[14.]**13.** Preceptorship certificate: $25.00[.]**;**
14. Reinstatement fee: $200.00.

(a)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF PHYSICAL THERAPY

State Board of Physical Therapy Rules Proposed Readoption: N.J.A.C. 13:39A

Authorized By: State Board of Physical Therapy, Patricia E. Stuart, Executive Director.
Authority: N.J.S.A. 45:9-37.18 and 45:1-3.2.
Proposal Number: PRN 1991-177.

Submit comments by May 15, 1991 to:
Patricia E. Stuart, Executive Director
State Board of Physical Therapy
1207 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 13:39A is scheduled to expire on July 7, 1991. The rules in this chapter were initially promulgated in 1986 in order to implement the provisions of the Physical Therapist Licensing Act of 1983, P.L. 1983, c.296. As required by the Executive Order, the State Board of Physical Therapy has reviewed these rules and has determined them to be necessary, reasonable and proper for the purposes for which they were originally promulgated. The current rules proposed for readoption have had an advantageous impact on the regulation of the profession by enabling the Board to have in place procedures which maintain high standards of practice, thus serving and protecting the public's best interests. The Board anticipates some rule changes in the near future; however, because of time constraints it is presently proposing the readoption of its rules without change. A brief summary of the content of each of the six subchapters of N.J.A.C. 13:39A follows:

Subchapter 1, Agency Organization and Administration, is divided into sections on election of officers, delegation of authority to act on emergent applications and procedures for examination review. The Board's fee schedule is also set forth in this subchapter. Proposed amendments to the fee schedule were published in the February 19, 1991 issue of the New Jersey Register at 23 N.J.R. 388(a). It is anticipated that these amendments will be adopted and promulgated prior to the chapter readoption and that they will be included in the readoption.

Authorized practice by a licensed physical therapist and authorized practice by a licensed physical therapist assistant are defined in subchapter 2. Each of the components of the practice of physical therapy—treatment, examination and instruction—is defined in detail in a separate definitional section, which also articulates the level of supervision which a physical therapist must exercise over a physical therapist assistant. The definitional section sets forth, in addition, what the Board will consider acceptable evidence that the direction of an authorized health care provider has been obtained prior to the initiation of physical therapy treatment. Finally, tasks which may be delegated by a physical therapist to unlicensed persons are identified in this subchapter.

Subchapter 3, Unlawful Practices by Licensees, sets forth the standards to which physical therapists will be held in the conduct of their practice. Specifically, this subchapter identifies the requisite elements of an appropriate physical therapy patient record; precludes certain charges by a physical therapist; and requires certain disclosures to be made to consumers. This subchapter also identifies activities which are deemed to be outside the scope of physical therapy.

Subchapter 4, Unlicensed Practice, identifies conduct the Board will deem to constitute the unlicensed practice of physical therapy and, accordingly, identifies when the Board will contemplate the initiation of appropriate enforcement proceedings.

Credentialing of applicants is addressed in subchapter 5. Specifically, this subchapter identifies the educational credentials and examination standards for applicants for licensure as physical therapists and as physical therapist assistants. This subchapter also sets forth the Board's requirements in connection with licensure by endorsement; scores on standardized examinations administered in other states; language comprehension; re-examination and nonappearance at examination. The language comprehension requirements (N.J.A.C. 13:39A-5.7) were most recently amended on May 21, 1990 to make the required TOEFL score (Test of English as a Foreign Language) consistent with the TOEFL requirement in other states; revisions were also made to require TOEFL scores to be submitted with the application for licensure, thereby prohibiting the issuance of a temporary license or the scheduling of the examination prior to achievement of the necessary TOEFL score. Amendments to N.J.A.C. 13:39A-5.1(a)2 have been proposed but not yet promulgated. The proposed amendments relate to educational requirements for foreign-trained applicants for licensure (see 22 N.J.R. 2259(a)). It is anticipated that these amendments will be promulgated prior to the readoption, and that they will be included in the adoption.

Subchapter 6 sets forth the conditions under which temporary licenses will be issued to persons deemed eligible to sit for the licensure examination. Standards for the issuance of temporary visiting licenses to out-of-State therapists are also articulated in this subchapter.

Social Impact

The rules proposed for readoption provide various procedures for the orderly administration of the Board's operations and the conduct of examinations. Readoption of these rules will enable the Board to continue to fulfill its statutory mandate to protect the public health and safety by ensuring that only qualified individuals are licensed to practice physical therapy. In ensuring professional competence and adequate safeguards of the patient's health, the rules are of obvious benefit to consumers of physical therapy services. The profession will also benefit from the readoption in that this chapter provides a clear set of required actions, procedures and prohibitions.

Economic Impact

The rules proposed for readoption do not economically impact directly on the general public, except to the extent that they identify unlawful business practices by licensees; aggressive enforcement of these sections could result in a benefit to the public directly through billings to them and indirectly through insurance premiums. Patients who request a written report or a copy of their treatment records will incur reasonable costs in connection therewith.

The fee schedule imposes a quantifiable impact on license applicants and licensees. Compliance with the licensure requirements for education, examination, etc. are also costs to be borne by those seeking licensure as physical therapists and physical therapist assistants in this State. The detailed training and examination requirements have been deemed by the Legislature to be necessary in order to maintain high standards in the profession and to protect the public health.

Because funding of the Board's operation is derived from licensing fees, these rules will have a positive economic impact on the Board; failure to readopt would place such operation in jeopardy.

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Regulatory Flexibility Analysis

The New Jersey State Board of Physical Therapy currently licenses approximately 5,000 physical therapists and approximately 900 physical therapist assistants. The specific number of small businesses is impossible to determine, since the Board licenses individuals and not entities. The rules proposed for readoption do contain recordkeeping and compliance requirements which may affect licensees who practice as small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Licensed physical therapists are required to maintain contemporaneous patient records containing specified information and must provide copies of the treatment record to the patient within 15 days of written request. Licensees are also required to contact the patient's physician if the licensee wishes to alter a therapeutic plan in a manner not consistent with the initial physician direction. Other requirements include disclosure of specified information in connection with any form of public communication relating to a business entity offering physical therapy services; provision of a written fee schedule to any interested person upon request; inclusion of the licensee's current license number on bills; and posting in a conspicuous place of the biennial renewal certificate as well as a notice containing the Board's name, address and telephone number. The Board does not anticipate that professional services will be needed in order to comply with these requirements. The Board believes these requirements are reasonable and consistent with its objectives to promote and protect the public health and welfare. Accordingly, the rules proposed for readoption must be uniformly and consistently applied; no differential treatment can be accorded to small businesses.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:39A.

(a)

DIVISION OF CONSUMER AFFAIRS
BOARD OF VETERINARY MEDICAL EXAMINERS

Fees

Proposed Amendment: N.J.A.C. 13:44-4.1

Authorized By: Board of Veterinary Medical Examiners, Maurice W. McQuade, Executive Director.
Authority: N.J.S.A. 45:16-3 and 45:16-9.9.
Proposal Number: PRN 1991-187.

Submit written comments by May 15, 1991 to:
Maurice W. McQuade, Executive Director
State Board of Veterinary Medical Examiners
Post Office Box 45020
Newark, New Jersey 07102

The agency proposal follows:

Summary

The State Board of Veterinary Medical Examiners is proposing to amend its fee schedule, N.J.A.C. 13:44-4.1, in order to increase its application, registration, temporary permit and reinstatement fees. These fee increases are necessary to prevent a fiscal loss to the Board, which is required pursuant to N.J.S.A. 45:1-3.2 to cover its expenses.

Amendments are also proposed to reflect a determination of the Division of Consumer Affairs to amend the fee schedules of the professional boards which it regulates in order to accurately and specifically identify the actual elements for which a Board incurs expenses and in order to create within the Division a uniform method of assessing and collecting fees from the professional boards. In that regard, the fees in N.J.A.C. 13:44-4.1(a)1, 12 and 13 have been renamed for clarification purposes, and late renewal and initial license fees have been established. Reference to a training certificate fee has been deleted since the American Veterinary Medical Association no longer conducts the training program pursuant to which the Board issued these training certificates.

Social Impact

The proposed fee increases, which will affect all current and potential licensees of the Board of Veterinary Medical Examiners as well as individuals seeking temporary permits, are necessary to generate revenues to defray all proper expenses incurred by the Board in fulfilling its statutory obligation to evaluate applicants for licensure and to regulate the practice of veterinary medicine. The new fee schedule will provide the Board with the minimum financial resources to carry on its responsibilities to protect the public health, safety and welfare by ensuring professional competence and the maintenance of high professional standards.

Economic Impact

Applicants for licensure, individuals seeking temporary permits, and current licensees will be affected by this proposed amendment in that they will be required to pay higher fees for applications, temporary permits and biennial registration. The Board points out, however, that the fees proposed to be amended have not been increased in over five years and that these increases are necessary to prevent a fiscal loss to the Board, which, as stated, is required to cover its expenses. In accordance with N.J.S.A. 45:1-3.2, the sums to be raised are estimated not to exceed the amount required to defray all proper expenses incurred by the Board. The Board believes that the increased fees are, as a business expense, reasonable and therefore does not anticipate higher charges to the consumer as a result of this amendment.

Regulatory Flexibility Analysis

The proposed fee increases will affect all applicants for licensure and temporary permits and all of the estimated 1,675 veterinarians currently licensed by the Board, approximately 430 of whom operate individually owned veterinary facilities. It is estimated that the majority of these veterinary facilities would be categorized as "small businesses" under the criteria of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Compliance requirements consist of paying increased licensing fees in a timely manner. There are no reporting or recordkeeping requirements, and no professional services are needed. The fee increases are necessary to enable the Board to avoid operating at a loss. Since the fees have been set at the lowest amount that will cover the Board's operating expenses, the intent of the Regulatory Flexibility Act to minimize adverse economic impact has been implemented.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

13:44-4.1 General provisions

(a) The following fees shall be charged by the board:

[1. Review of credentials (filing fee) ..... $50.00]
1. Application fee $75.00
2. Initial license fee:
i. During the first year of a biennial renewal period 150.00
ii. During the second year of a biennial renewal period 75.00
[2.]**3.** Practical examination 125.00
[3.]**4.** National Board Examination 150.00
[4.]**5.** Clinical Competency Examination 90.00
[5.]**6.** Temporary Permit I ..... [75.00]**100.00**
[6.]**7.** Temporary Permit II ..... [75.00]**100.00**
[7.]**8.** Active registration fee (biennial) ..... [120.00]**150.00**
[8.]**9.** Non-active registration fee (biennial) ..... [100.00]**125.00**
10. Late renewal fee 100.00
[9.]**11.** Reinstatement fee ..... [75.00]**150.00 plus initial license fee**
[10.]**12.** [Branch office] **Duplicate license** registration (biennial) 50.00
[11.]**13.** [Certification] **Verification of licensure** 25.00
[12. Training certificate ..... 50.00]

(b)

DIVISION OF CONSUMER AFFAIRS
ADVISORY BOARD OF PUBLIC MOVERS AND WAREHOUSEMEN

Fees

Proposed New Rule: N.J.A.C. 13:44D-2.4

Authorized By: Patricia A. Royer, Director, Division of Consumer Affairs.
Authority: N.J.S.A. 45:14D-15.
Proposal Number: PRN 1991-199.

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Submit written comments by May 15, 1991 to:
Diane I. Romano, Executive Director
Advisory Board of Public Movers and Warehousemen
P.O. Box 45018
Newark, New Jersey 07102

The agency proposal follows:

Summary

Pursuant to the Public Movers and Warehousemen Licensing Act, N.J.S.A. 45:14D-1 et seq., the Director of the Division of Consumer Affairs is required to regulate persons and corporations engaged in the business of public moving and storage. N.J.S.A. 45:14D-15 requires the Director to establish fees for licenses, renewals of licenses or other services. These fees must be established to the extent necessary to defray all proper expenses incurred by the Director, but may not be fixed at a level that will raise excess amounts. In order to defray these administrative expenses, an interim fee schedule based on estimated costs was developed and has been in existence since 1982. The Division has found, however, that its actual administrative and enforcement costs have significantly exceeded the revenues generated, and it is therefore proposing a formal fee schedule which will more adequately defray its expenses. The proposed new rule establishes initial and annual licensing fees, fees for license copies, a late renewal fee and a reinstatement fee. These fees are calculated to provide the Division with funding to cover the costs of enforcing the statute and the regulations, including the maintenance of records, the prosecution of unlicensed individuals or corporations and investigatory time to verify compliance or as necessitated by consumer complaints.

Social Impact

The proposed fee schedule will enable the Division of Consumer Affairs to continue to meet the responsibilities imposed upon it by the Legislature in regard to regulating persons and corporations engaged in the business of moving and storage, thereby ensuring the protection of the consumer.

Economic Impact

The proposed fee schedule will have an economic impact on applicants for licensure and on all 380 currently licensed individuals and corporations. The fees proposed are necessary to defray administrative costs, which have been considerably greater than those originally estimated. If the Division allowed its current fee structure to remain in place over the next year, it would not be in a position to properly discharge its statutory responsibilities. The fees proposed, in the Division's view, are reasonable and are calculated to cover the Division's administrative and enforcement expenses. No economic impact on the public is anticipated; it is unlikely that the proposed fee schedule would necessitate an increase in prices charged to the consumer, since as a business expense these fees are reasonable.

Regulatory Flexibility Analysis

The proposed fee schedule applies to all 380 currently licensed public movers and to applicants for licensure, the majority of which would be considered small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16. There are no reporting or recordkeeping requirements related to the fees other than completion of the initial licensing or renewal application, and no professional services are needed in order to comply. Since the fees are calculated to defray expenses arising from the Board's statutory obligation to regulate public movers and warehousemen, exemptions for small businesses are not possible.

Full text of the proposed new rule follows:

13:44D-2.4 Fees

(a) Fees for initial licenses, renewal licenses and copies of licenses shall be as follows:

1. Initial license	$400.00
2. Renewal license (one year)	$400.00
3. Copy of license:	
i. First and second copy	$ 50.00
ii. Third and each additional copy	$ 20.00
4. Late renewal fee	$200.00
5. Reinstatement fee	$200.00

plus the initial license fee.

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF CHIROPRACTIC EXAMINERS
Fees
Proposed New Rule: N.J.A.C. 13:44E-2.5

Authorized By: State Board of Chiropractic Examiners, Jay Church, Executive Director.
Authority: N.J.S.A. 45:1-3.2 and 45:9-41.23(h).
Proposal Number: PRN 1991-188.

Submit written comments by May 15, 1991 to:
Jay Church, Executive Director
Board of Chiropractic Examiners
P.O. Box 45004
Newark, New Jersey 07102

The agency proposal follows:

Summary

The Chiropractic Board Act, N.J.S.A. 45:9-41.17 et seq., established the State Board of Chiropractic Examiners in the Division of Consumer Affairs in the Department of Law and Public Safety. The Act transferred the regulation of the practice of chiropractic from the State Board of Medical Examiners to the newly created State Board of Chiropractic Examiners. The Act took effect in February 1990. The new Board of Chiropractic Examiners must establish a fee schedule in accordance with N.J.S.A. 45:1-3.2 in order to cover the investigative, examination and program costs associated with the administration of the Board which were previously met by the Board of Medical Examiners.

The Board of Chiropractic Examiners is proposing a group of fees which include the application fee, examination fee, endorsement fee, initial license fee, biennial license renewal fee, duplicate license fee, verification of licensure fee, late renewal fee, and reinstatement fee. As a result of increased expenses and the costs of an independent board, a number of the fees have increased in the proposed current schedule. Examination fees will rise from $150.00 to $200.00. The initial license fee and renewal fee for a biennial period will increase to $260.00 from the present $120.00. The fee charged for late renewals will rise to $50.00 from $25.00. In addition, new fees are being proposed for the application for licensure, licensure by endorsement, verification of licensure, and reinstatement of licensure. The fee of $25.00 for a duplicate license will remain the same.

Social Impact

The proposed fee schedule and any increases, which will affect all current and potential licensees of the Board of Chiropractic Examiners, are necessary to enable the Board to discharge its statutory obligations, which include the evaluation of applicants for licensure and the regulation of the practice of chiropractic. The new fee schedule will provide the Board with the minimum financial resources to carry on its responsibilities to protect the public health, safety and welfare by ensuring professional competence and the maintenance of high professional standards.

Economic Impact

The proposed fee schedule, including increases, should yield revenues sufficient to cover the rising expenses generated by the Board's many statutory obligations: administration of examinations; issuance of licenses; investigation of complaints; initiation and prosecution of disciplinary actions; and addressing issues relevant to the practice of chiropractic. The proposed fee schedule will have a direct economic impact on Board licensees and, to the extent the proposed fee increases may be passed along to the patient as a cost of practice, may have an indirect economic impact on consumers. However, the Board has a statutory duty to cover its expenses. The increases have been calculated not to exceed the amount necessary to fund the Board's administration.

Regulatory Flexibility Analysis

If, for the purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., chiropractors are deemed "small businesses" within the meaning of the statute, the following statements are applicable.

The Board of Chiropractic Examiners currently licenses approximately 2,600 individuals. The proposed rule, which includes a general increase in the Board's fee schedule, does not involve any reporting or recordkeeping nor does it necessitate the retention of professional services for compliance. The fee increases are necessary to enable the Board to avoid

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operating at a loss. Since the fees have been set at the lowest amount that will cover the Board's operating expenses, the intent of the Regulatory Flexibility Act to minimize adverse economic impact has been implemented.

Full text of the proposed new rule follows:

13:44E-2.5 Fee schedule

(a) The following fees shall be charged by the Board:

1. Application Fee	$125.00
2. Examination Fee	200.00
3. Endorsement Fee	75.00
	(plus initial license fee)
4. Initial License Fee:	
i. During the first year of a biennial renewal period	260.00
ii. During the second year of a biennial renewal period	130.00
5. Biennial License Renewal Fee	260.00
6. Duplicate License Fee	25.00
7. Verification of Licensure Fee	40.00
8. Late Renewal Fee	50.00
9. Reinstatement Fee	125.00
	(plus all past due license fees)

(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules
Open Claiming
Proposed Amendment: N.J.A.C. 13:70-12.37

Authorized By: New Jersey Racing Commission,
Charles K. Bradley, Deputy Director.
Authority: N.J.S.A. 5:5-30.
Proposal Number: PRN 1991-197.

Submit written comments by May 15, 1991 to:
Charles K. Bradley, Deputy Director
New Jersey Racing Commission
200 Woolverton Street, CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment will allow any individual or entity to obtain an open claiming license regardless of whether they were licensed in the previous year as an owner in this or any other jurisdiction. The amendment deletes the provision that an individual who was licensed the previous year in any jurisdiction is ineligible to obtain on open claiming license.

Social Impact

The proposed amendment will be beneficial to the racing industry in that it will allow a greater number of individuals the opportunity to claim horses and therefore become owners in the racing industry. The current rule prohibits individuals who had a license the previous year from obtaining an open claiming license, thereby reducing their opportunity to re-acquire an interest in a horse.

Economic Impact

The proposed amendment will have a slight positive economic benefit to the racing industry in that it will provide more people opportunities to claim horses and, with the additional claiming of horses that may occur, there will be a minimal positive impact on sales tax revenues.

Regulatory Flexibility Statement

The proposed amendment imposes no reporting, recordkeeping or compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment deletes the provision that an individual who was licensed the previous year in any jurisdiction is ineligible to obtain an open claiming license. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

13:70-12.37 Opening claiming

(a) This section is not applicable to any licensed owner that has claiming privileges pursuant to N.J.A.C. 13:70-12.1.

[(a) A new owner who does not have claiming privileges pursuant to N.J.A.C. 13:70-12.37] **(b) Any individual or entity** may claim a horse by obtaining an open claiming license pursuant to [(b)] **(c)** below.

[1. A new owner is defined as an individual, partnership, corporation, or any other authorized racing interest that has not held an owner's license in any racing jurisdiction during the prior calendar year.]

[(b) A new owner] **(c) An applicant** may obtain an open claiming license by complying with the following procedures:

1. through 3. (No change.)

Recodify existing (c) and (d) as **(d) and (e)** (No change in text.)

(b)

NEW JERSEY RACING COMMISSION

Harness Rules
Open Claiming
Proposed Amendment: N.J.A.C. 13:71-14.36

Authorized By: New Jersey Racing Commission,
Charles K. Bradley, Deputy Director.
Authority: N.J.S.A. 5:5-30.
Proposal Number: PRN 1991-196.

Submit written comments by May 15, 1991 to:
Charles K. Bradley, Deputy Director
New Jersey Racing Commission
200 Woolverton Street, CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment will allow any individual or entity to obtain an open claiming license regardless of whether they were licensed in the previous year as an owner in this or any other jurisdiction. The amendment deletes the provision that an individual who was licensed the previous year in any jurisdiction is ineligible to obtain on open claiming license.

Social Impact

The proposed amendment will be beneficial to the racing industry in that it will allow a greater number of individuals the opportunity to claim horses and therefore become owners in the racing industry. The current rule prohibits individuals who had a license the previous year from obtaining an open claiming license thereby, reducing their opportunity to re-acquire an interest in a horse.

Economic Impact

The proposed amendment will have a slight positive economic benefit to the racing industry in that it will provide more people opportunities to claim horses and, with the additional claiming of horses that may occur, there will be a minimal positive impact on sales tax revenues.

Regulatory Flexibility Statement

The proposed amendment imposes no reporting, recordkeeping or compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment deletes the provision that an individual who was licensed the previous year in any jurisdiction is ineligible to obtain an open claiming license. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

13:71-14.36 Opening claiming

(a) This subchapter is not applicable to any licensed owner that has claiming privileges pursuant to N.J.A.C. 13:71-14.1.

[(a) A new owner who does not have claiming privileges pursuant to N.J.A.C. 13:71-14.1] **(b) Any individual or entity** may claim a horse by obtaining an open claiming license pursuant to [(b)]**(c)** below.

[1. A new owner is defined as an individual, partnership, corporation, or any other authorized racing interest that has not held an

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owner's license in any racing jurisdiction during the prior calendar year.]

[(b) A new owner] **(c) An applicant** may obtain an open claiming license by complying with the following procedures:

1. through 3. (No change.)

Recodify existing (c) and (d) as **(d) and (e)** (No change in text.)

(a)

NEW JERSEY RACING COMMISSION

Harness Rules
Error in Declaration
Proposed Amendment: N.J.A.C. 13:71-16.3

Authorized By: New Jersey Racing Commission, Charles K. Bradley, Deputy Director.

Authority: N.J.S.A. 5:5-30.

Proposal Number: PRN 1991-198.

Submit written comments by May 15, 1991 to:
Charles K. Bradley, Deputy Director
New Jersey Racing Commission
200 Woolverton Street, CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment will allow a horse the opportunity to race in the event the horse is omitted from a race by an error of the association or its agent or employee. The horse would be added to the race but given the outside post position if the error is discoverd prior to the printing of the official program or prior to scratch time. If a post position is not available the race would be re-drawn. This proposed amendment would only be available in stakes races, late or early closers or futurities and would not be applicable to overnight races.

Social Impact

The proposed amendment will have a positive influence on the racing industry by having a provision to add a horse to the race in the event it was inadvertently omitted from the race. The re-drawing of the race would only occur if there were not a post position in which to add the horse omitted. When a race is re-drawn, owners and trainers may be dissatisfied with the post position that they receive when a race has to be re-drawn. Therefore, it should be beneficial to the agency. The New Jersey Sire Stakes supports this proposed amendment.

Economic Impact

The proposed amendment could have an economic impact on an owner whose horse was omitted from a stakes race. The amendment would allow the owner's horse an opportunity to compete in the race for which he is otherwise eligible.

Regulatory Flexibility Statement

There are no reporting or recordkeeping requirements imposed by this amendment, which deals with the adding of a horse to a race when the horse has been omitted by error in the race secretary's office. In such circumstances, requirements are imposed upon the race association, none of which are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as employing more than 100 people. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

13:71-16.3 Error in declaration

(**a**) Where a horse properly declared[, other than by telephone,] is omitted from the race by error of the association, **or its agent or employee,** the horse [may] **shall** be added to the race but given the outside post position provided, however, that the error is discovered prior to the [publication] **printing** of the official program **or prior to scratch time, whichever is sooner** [and said program disclosed such position].

1. In the event that there is not a position on the gate available to add the horse omitted in error, the race shall be redrawn. This shall apply only in stakes events, late closers, early closers and futurities and shall not apply to overnight events.

PUBLIC UTILITIES

(b)

BOARD OF PUBLIC UTILITIES

Home Energy Savings Program (HESP)
Proposed Amendments N.J.A.C. 14:38-1.2, 2.1 through 2.3, 3.1 through 3.3, 4.1, 5.6, 6.2, 7.1, 7.3, 7.6, 8.1 through 8.4, 9.1 and 9.2

Authorized By: New Jersey Board of Public Utilities, George H. Barbour and Jeremiah F. O'Connor, Commissioners.

Authority: N.J.S.A. 52:27F-11(g) and (q).

BPU Docket Number: AX90070731.

Proposal Number: PRN 1991-195.

Submit comments by May 15, 1991 to:
Robert Chilton
Division of Electric
Board of Public Utilities
2 Gateway Center
Newark, N.J. 07102

The agency proposal follows:

Summary

The rules pertaining to the Home Energy Savings Program (HESP), N.J.A.C. 14A:21, expired on November 21, 1990, and were adopted as a new rule and recodified as N.J.A.C. 14:38 on February 6, 1991 and effective as published April 1, 1991 in the New Jersey Register (see: 23 N.J.R. 1013(a)). The purpose of these rules is to encourage the installation of energy conservation measures in new and existing houses by residential customers of investor-owned electric and gas utilities and home heating suppliers.

At the time the Board acted on February 6, 1991, it was determined that home heating suppliers should be permitted to participate in the Home Energy Savings Program. The Board was advised by the Office of the Attorney General, however, that to do so would constitute changes that would require additional notice and comment, pursuant to N.J.A.C. 1:30-4.3. Accordingly, it was decided to adopt N.J.A.C. 14:38 as a new rule and propose amendments thereto at a later date by which to permit participation by home heating suppliers.

The proposed amendments would provide a home heating supplier with the opportunity to administer HESP audits provided said supplier meets all program requirements. The proposed amendments would also increase the number of entities available to perform HESP related services and would further provide utility ratepayers with the option of dealing with a utility subcontractor or with a local contractor selected by the customer.

Social Impact

Adoption of the proposed amendments will have a positive social impact in that energy conservation by HESP participants will help to reduce reliance on fuel oil supplies. In addition, these amendments will reduce not only the needs for new natural gas supplies and new power plant construction and operations, but also the societal costs attendant thereto. Important among HESP's societal benefits is an improvement in the State's environmental quality. Also, the reduction in the use of imported fossil fuels through conservation will add to the security of the United States.

In addition, as stated in the Summary hereinabove, the proposed amendments would allow for more providers for HESP related services and give utility customers an option as to whether the necessary service will be provided by a utility subcontractor, or by a local contractor selected by the customer.

Economic Impact

The job market in New Jersey should improve because small businesses, in the form of HESP measure installers and suppliers and home heating suppliers, will be able to maintain and expand their customer bases. Existing jobs will be preserved and new jobs created.

The administration and enforcement of these amended rules will have no economic effect on the Board since the Board will not be required to expend funds beyond that level presently needed to cover personnel expenses.

The costs of HESP implementation to the regulated entities will be offset by an increased energy awareness on the part of consumers which will lead to a reduction in the costs of future power plant construction

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and energy production. Home heating supplier participation is strictly voluntary and the proposed amended rules will therefore have no economic impact on these small businesses unless they choose to participate. Since such participation is voluntary, the Board assumes that these small businesses will participate only if some benefits are derived therefrom.

Regulatory Flexibility Analysis

The proposal modifies rules adopted by the Board of Public Utilities which insure the continued dissemination of energy conservation information by electric and gas utilities to their residential customers. Included in the information to be provided to these customers is a list of those contractors and suppliers, most of which are classified as small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., which have agreed to participate in HESP.

Although the amended rules would require such contractors and suppliers to comply with reporting, recordkeeping and other compliance requirements, it should be noted that such requirements are consistent with those imposed by the existing rules. These requirements include the payment of a nominal one-time fee of $25.00 and the submission of a certified application; an annual verification of liability insurance coverage; the filing of an annual report including items such as the number of audits performed, the number of loans and grants arranged, the number of program announcements mailed and a description of other promotional activity; and the retention of certain records such as the name and address of each customer who receives an audit and a copy of the data collected during the audit.

The Board considers the requirements imposed by the amended rules to be baseline requirements in that they are necessary in order that the Home Energy Savings Program may be properly implemented and regulated. Accordingly, the Board is of the further opinion that these requirements are not so burdensome as to warrant a distinction between large and small businesses.

As indicated above, the modifications included in this proposal imposes the same reporting, recordkeeping and other compliance requirements on home heating suppliers who wish to perform HESP related services as is currently imposed on electric and gas utilities. However, as is also indicated, home heating supplier participation in HESP is strictly voluntary.

Full text of the proposal follows (additions indicated in boldface **thus**):

14:38-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

. . .

"Appropriate covered utility" means the electric covered utility if the customer heats with electric or a fuel other than natural gas and the gas covered utility if the customer heats with natural gas **or home heating supplier if customer heats with other than natural gas or electric**.

. . .

"Program announcement" means the information and offer of services required to be sent by each covered utility **or home heating supplier** to every eligible customer in its service area pursuant to N.J.A.C. 14:38-2.

. . .

14:38-2.1 Scope

(a) Beginning January 26, 1991, each covered utility **or home heating supplier** shall send a program announcement to its eligible customers in the State. All program announcements shall be sent to all eligible customers at least once a year until January 1, 1996. Such program announcements may be cycled by the covered utilities **or home heating suppliers** by route service areas. The program announcements shall be in a form provided, or approved in advance by the BPU. The BPU shall have 30 calendar days from the date of proposed form submittal by the covered utility **or home heating supplier** to approve, reject or otherwise modify the form of the proposed program announcement. The BPU's failure to act within the 30-day period shall constitute automatic approval.

(b) A program announcement shall be sent with either the customer's utility bill or mailed independently to each customer. The program announcement shall be reinforced with a promotional campaign approved in advance by the BPU. The BPU shall have 30 calendar days from the date of the proposed promotional campaign submittal by the covered utility **or home heating supplier** to approve or reject the proposed promotional campaign. The BPU's failure to act within the 30-day period shall constitute automatic approval. If an energy conservation plan including the promotional efforts related to HESP program services, has been separately approved by the BPU, no separate submittal of a promotional campaign is necessary under this subchapter.

14:38-2.2 Contents and prohibitions

(a) The program announcement may include all of the following for a typical New Jersey residential building, as specified from time to time by the BPU:

1. (No change.)

2. Estimated saving expressed in ranges of dollars that result from taking advantage of individual program measures over one year's time. Such estimated savings shall be calculated by the BPU from time to time and shall be made available for use by the covered utilities **or home heating suppliers**.

3.-4. (No change.)

(b) (No change.)

14:38-2.3 New customers

(a) Each covered utility **or home heating supplier** shall identify and send a program announcement to each new eligible customer within 60 calendar days of the date service is established in the customer's name.

(b) Each covered utility **or home heating supplier** shall inform each new eligible customer in writing within 60 calendar days of the date service is established in the customer's name that upon request, the customer may receive at no charge, a copy of the results of any past program audit of the customer's residence which a covered utility **or home heating supplier** may have performed pursuant to this chapter.

14:38-3.1 Program services

(a) All covered utilities **or home heating suppliers** shall offer and provide, upon request, the following program services to all eligible customers:

1.-5. (No change.)

(b) All covered utilities **or home heating suppliers** shall designate toll-free telephone number(s) by which eligible customers may request program services.

(c) All covered utilities **or home heating suppliers** receiving requests for program services from eligible customers shall record the requests and the arrangements made by the covered utility **or home heating supplier** for the audit in a form to be prescribed by the BPU. All such records shall contain the following information, if available, from the customer:

1.-11. (No change.)

(d)-(e) (No change.)

14:38-3.2 Arrangement of program audit

(a) (No change.)

(b) If an eligible customer who heats with a fuel other than **electricity or** natural gas contacts the BPU and requests a program audit, the BPU shall refer that request, including that part which requires a heating unit analysis, to an appropriate covered utility **or home heating supplier**.

(c) Upon receiving a referral from the BPU each covered utility **or home heating supplier** shall promptly contact the eligible customer to arrange for an appointment to provide the applicable program audit and services or heating unit analysis.

(d) If a covered utility **or home heating supplier** receives a request for a program audit from a customer who heats with fuel purchased from a home heating supplier the utility **or home heating supplier** shall record the same information required by N.J.A.C. 14:38-3.1(c).

(e) (No change.)

14:38-3.3 Timing and preconditions

(a) All covered utilities **or home heating suppliers** shall provide a program audit, including an analysis of any oil-fired heating unit, to determine applicable program measures and their estimated costs,

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savings and paybacks within 30 working days of receipt of a request or referral. If the demand for such services becomes too great, that utility **or home heating supplier** must so notify the BPU, in writing, and contact each eligible customer requesting the services within 30 working days of the request or referral to set up an appointment and complete the program audit within 60 working days of the date of the request or referral.

(b) (No change.)

(c) No covered utility **or home heating supplier** or company under contract with a covered utility shall require any eligible customer to purchase or perform any other audit, service, product or measure as a precondition to receiving any program service. Nor shall such utility **or home heating supplier** or company under contract with a covered utility counsel, advise, suggest or recommend one fuel type over another type of fuel.

(d) No covered utility, **home heating supplier** or company under contract with a covered utility shall discriminate unfairly among eligible customers participating in the program.

14:38-4.1 Services required

(a) When billing a customer for a program audit, each covered utility **or home heating supplier** shall identify the charge and list it separately on the first bill rendered for the charge.

(b) Each covered utility **or home heating supplier** shall allow eligible customers to include payments for those charges along with payments for their utility bill. When receiving a payment from a customer that includes payment for utility service or fuel and payment for any program service, the utility **or home heating supplier** shall credit the portion of the payment that exceeds the charge for utility service or fuel to program charges, unless the customer specifies otherwise.

14:38-5.6 Audit subcontractors

Covered utilities **or home heating suppliers** may subcontract HESP program audits. In developing bid specifications, advertising for bids and awarding contracts and subcontracts, covered utilities **or home heating suppliers** shall give consideration to participation by small businesses and minority-owned businesses. The covered utilities **or home heating suppliers** shall furnish the BPU evidence of compliance with the above requirement upon request.

14:38-6.2 Random inspections

(a)-(b) (No change.)

(c) Each audit recipient may submit to the appropriate covered utility **or home heating supplier** a work order in a form prescribed by the BPU for each installation at the time of the entry of the contract for installation. The covered utility **or home heating supplier** shall review all submitted work orders and choose which installations shall be inspected on a random basis.

(d) The covered utility **or home heating supplier** shall promptly contact the audit recipient and inform him or her of the proposed inspection, and arrange an appointment within two weeks. The covered utility **or home heating supplier** shall provide an inspector, qualified by the BPU to inspect that type of installation, to make an inspection report of the site to determine compliance with applicable installation standards. In no case may an inspector inspect his or her own work or the work performed directly by the inspector's employer.

(e) (No change.)

(f) Upon receipt of an inspection report stating that the installation is not in compliance, the installer shall, within 30 days, return to the site and correct any and all violations found by the inspector. Upon completion of the corrections, the installer shall notify the covered utility **or home heating supplier** in writing of the corrections.

(g) Upon receipt of such notification of corrections, the covered utility **or home heating supplier** which conducted the inspection must make a reinspection within two weeks.

(h) Upon receipt of a notice of reinspection, the utility **or home heating supplier** shall contact the audit recipient to arrange for a reinspection. The reinspection report shall contain the same information as in (d) above. Copies of the report shall be provided to the customer and the installer no later than one week from the date of reinspection. A copy of the report shall be provided to the BPU upon request.

(i) (No change.)

(j) The BPU may review complaints made by audit recipients of faulty or improper installations by participating installers, and may, in its discretion, notify a covered utility **or home heating supplier** to provide an inspection of the customer's residence by a qualified inspector. Upon receipt of such a notice, the covered utility **or home heating supplier** shall comply and conduct an inspection and report the results in compliance with the requirements in this subchapter.

14:38-7.1 General requirements

(a)-(b) (No change.)

(c) The BPU shall update the Master Record at least every 180 days and shall promptly notify the covered utilities **or home heating suppliers** of any changes in its content.

(d)-(e) (No change.)

14:38-7.3 Suppliers: requirements for participation

(a) To be eligible for inclusion on the Master Record, a supplier shall complete a certified application to the BPU which shall include the following:

1.-4. (No change.)

5. Agree to participate in conciliation procedures if a complaint is made by an eligible customer, the BPU, a covered utility **or home heating supplier**, or any other State or Federal agency;

6. (No change.)

14:38-7.6 Removal

(a) (No change.)

(b) Grounds for removal may include, but are not limited to, the following:

1. (No change.)

2. Refusal to participate in good faith in any conciliation or redress proceeding conducted by the BPU, a covered utility **or home heating supplier**, or at the BPU's request;

3.-6. (No change.)

14:38-8.1 General contents

(a) All lists of installers and suppliers of program measures shall contain the name, address and telephone number of each supplier and installer on the Master Record who is in or contiguous to the covered utility's **or home heating supplier's** service territory and an indication of which types of program measures a supplier or installer sells or installs and in which geographical areas. Identification of program measures shall not include brand names.

(b) (No change.)

14:38-8.2 Installer lists

(a) All lists of installers may contain information that any eligible customer who receives an installer list, and has program measures installed by an installer chosen from that list, is entitled to the following program benefits:

1.-7. (No change.)

8. That inclusion of any installer on this list does not imply that the installer is recommended or selected by the BPU or the covered utility **or home heating supplier**, nor does the covered utility **or home heating supplier** in providing this list guarantee or warranty the type of work or quality of the work to be performed.

14:38-8.3 Supplier lists

(a) All lists of suppliers may contain the following information that any eligible customer who purchases any program measure from a listed supplier who indicates that the program measure meets applicable material standards or carries program measures warranty is entitled to the following benefits:

1.-3. (No change.)

4. That inclusion of a supplier on this list does not imply that the supplier is recommended or selected by the BPU or the covered utility **or home heating supplier**.

14:38-8.4 Updating lists

All covered utilities **or home heating suppliers** shall keep all lists of installers and suppliers current, and shall promptly place in service revised lists received from the BPU without any alterations, additions or deletions, unless approved by the BPU.

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14:38-9.1 Reporting: covered utilities **or home heating suppliers**

(a) Each covered utility **or home heating supplier** shall submit the following information in writing to the BPU on May 30, 1986 and annually thereafter through May 30, 1995 for the 12-month period ending the preceding April 1:

1. The approximate number of eligible customers and the percentage of those customers for whom the utility **or home heating supplier** is the primary heating fuel supplier;

2. The number of eligible customers who have requested each service and the number of requests the utility **or home heating supplier** has fulfilled, including:

i.-ii. (No change.)

iii. The number of loans and grants and the number of related installations arranged by the utility **or home heating supplier**; and

3. The number and function of people assigned to the utility's **or home heating supplier's** program, including part-time employees;

4. The costs incurred by the utility **or home heating supplier** in providing each service under the HESP Program including separately those costs paid by individual customers for services received, and those costs paid by all ratepayers;

5.-9. (No change.)

10. Utility's **or home heating supplier's** annual budget for the HESP Program including:

i.-vi. (No change.)

11.-12. (No change.)

(b) Each covered utility **or home heating supplier** shall submit the following information in writing and in a form provided or approved by the BPU on the 15th of each month for the preceding month:

1. The number of eligible customers who have requested each program service and the number of requests the utility **or home heating supplier** has fulfilled that may include:

i.-iii. (No change.)

2. The number of new customers who have requested a copy of the results of any past program audit of the customer's residence which the covered utility **or home heating supplier** may have performed;

3.-10. (No change.)

14:38-9.2 Record-keeping: covered utilities **or home heating suppliers**

(a) Each covered utility **or home heating supplier** shall keep the following records for the periods indicated and shall make them available to the BPU upon request:

1.-4. (No change.)

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Speed Limits

Routes U.S. 1 Business in Mercer County and Route U.S. 1 including Strawberry Street Connection and Milltown Road

Proposed Amendments: N.J.A.C. 16:28-1.150 and 1.151

Authorized By: Edward G. Baker, Acting Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-98.

Proposal Number: PRN 1991-201.

Submit comments by May 15, 1991 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments will establish revised "speed limit" zones along Routes U.S. 1 Business in the City of Trenton, and the Township of Lawrence, Mercer County, and Route U.S. 1 in the City of Trenton, Mercer County, and Milltown Road in North Brunswick Township, Middlesex County, for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

As part of a review of current conditions, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of revised "speed limit" zones along Route U.S. 1 Business in Mercer County and Route U.S. 1 in Mercer and Middlesex counties including Milltown Road were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.150 and 1.151 based upon the traffic investigation.

Social Impact

The proposed amendments will establish revised "speed limit" zones along Route U.S. 1 Business in the City of Trenton, and the Township of Lawrence, Mercer County, and Route U.S. 1 including Milltown Road in North Brunswick Township, Middlesex County, for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "speed limit" zone signs. The cost factors for the installation and procurement of signs are variable, depending upon size, materials used and the method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with N.J.S.A. 39, and the "Statewide Violations Bureau Schedule", issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendments does not place any bookkeeping, recordkeeping or compliance requirements on small businesses, as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules primarily affect the motoring public and the governmental agencies responsible for the enforcement of the rules.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

16:28-1.150 Route [US] **U.S.** 1 [Alternate] **Business**

(a) The rate of speed designated for the certain [part] **parts** of State highway Route [US] **U.S.** 1 [Alternate] **Business** described [herein below] **in this subsection** shall be [and hereby is] established and adopted as the maximum legal rate of speed [thereat]:

1. For both directions of traffic:

[i. Zone one: 40 mph in Lawrence Township from the Route U.S. 1 Alternate and Route U.S. 206 traffic circle (milepost 0.0) to Whitehead Road (milepost 0.7); thence

ii. Zone two: 45 mph to Texas Avenue (milepost 1.4); thence

iii. Zone three: 55 mph to Route US 1 (milepost 2.3).]

i. In Mercer County:

(1) City of Trenton:

(A) Zone 1: 35 miles per hour between the junction of Route U.S. 1 and the City of Trenton—Township of Lawrence line (Brunswick Circle) (approximate mileposts 0.0 to 0.41); thence

(2) Lawrence Township:

(A) Zone 1: 40 miles per hour between the City of Trenton—Township of Lawrence line (Brunswick Circle) and Whitehead Road (approximate mileposts 0.41 to 1.09); thence

(B) Zone 2: 45 miles per hour between Whitehead Road and Texas Avenue (approximate mileposts 1.09 to 1.80); thence

(C) Zone 3: 55 miles per hour between Texas Avenue and Carnegie Road (approximate mileposts 1.80 to 2.73).

16:28-1.151 Route [US] **U.S.** 1 including [Strawberry Street connection and] Milltown Road

(a) The rate of speed designated for the certain [part] **parts** of State highway Route [US] **U.S.** 1 described [herein below] **in this subsection** shall be [and hereby is] established and adopted as the maximum legal rate of speed [thereat]:

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1. For both directions of traffic:

i. Zone one: 50 mph in the City of Trenton and Lawrence Township from Conovers Alley (milepost 0.6) to [Strawberry Street (] milepost 3.0[)]; thence

ii.-iii. (No change.)

[(b) The rate of speed designated for the certain part of State highway route number US 1 described in this section shall be and hereby is established and adopted as the maximum legal rate of speed thereat:

1. For both directions of traffic:

i. 45 miles per hour along Strawberry Street connection from its junction with the Freeway to Ohio Avenue; thence

ii. 35 miles per hour along Strawberry Street to the Routes US 1, US 206, Brunswick Avenue traffic circle.

2. This action supersedes, and rescinds, any parts of previously adopted regulations or orders, inconsistent with the provisions contained herein.]

[(c)](**b**) The rate of speed designated for the certain part of State highway [route number US 1 (] Milltown Road[)] described in this [section] **subsection** shall be [and hereby is] established and adopted as the maximum legal rate of speed [thereat]:

1. (No change.)

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

Teachers' Pension and Annuity Fund Methods of Payment

Proposed Amendment: N.J.A.C. 17:3-5.6

Authorized By: Board of Trustees, Teachers' Pension and Annuity Fund, Michael Weik, Secretary.

Authority: N.J.S.A. 18A:66-56.

Proposal Number: PRN 1991-180.

Submit comments by May 15, 1991, to:
Peter J. Gorman, Esq.
Administrative Practice Officer
Division of Pensions
CN 295
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment deletes a portion of the rule concerning methods of payment governing the Teachers' Pension and Annuity Fund regarding Class A to B conversions, compulsory and temporary service purchases and the requirement that such payments must be currently liquidated before age 60. It is felt that the current provisions that limit the purchase of these types of service credit are obsolete and that those purchases should be treated the same as other purchases that can be scheduled for a maximum of 10 years.

Social Impact

The proposed amendment may affect current and future members of the Teachers' Pension and Annuity Fund who purchase Class A to B conversions, compulsory and temporary service credit, by allowing for an extension of the time period of the purchase, at the option of the purchaser.

Economic Impact

The proposed amendment will not have any adverse effect upon the retirement system or the taxpaying public, since it merely results in the extension of the time period of the purchase. The members affected by this amendment may experience some economic benefit, since their purchase payments will be spread over a longer period of time.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this amendment does not impose reporting, recordkeeping or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Since the rules of the Division of Pensions only impact upon public employers and/or public employees, this amendment will not have any adverse effect upon small business or private industry in general.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

17:3-5.6 Methods of payment

(a) Methods of payment include **the following**:

1.-2. (No change.)

3. Extra deductions equal to at least [½] **one-half** of the full regular pension deduction for a maximum period of 10 years[. Class A to Class B conversions, compulsory and temporary service purchases must be liquidated by age 60; if such person has attained the age of 58 or more at the time of purchase, two years will be specified];

4. (No change.)

BANKING

(b)

DIVISION OF REGULATORY AFFAIRS

License Fees, Assessments and Examination Charges

Proposed Amendments: N.J.A.C. 3:1-6.1, 6.2 and 6.6; 3:23-2.1

Authorized By: Jeff Connor, Commissioner, Department of Banking.

Authority: N.J.S.A. 17:1-8 and 8.1; 17:9A-335; 17:16C-8 and 82(b).

Proposal Number: PRN 1991-217.

Submit comments by May 15, 1991 to:
Robert M. Jaworski
Assistant Commissioner
Department of Banking
CN 040
Trenton, N.J. 08625

The agency proposal follows:

Summary

The Department of Banking proposes to amend its rules concerning (1) the assessments imposed on trust assets; (2) the license fees imposed pursuant to the Retail Installment Sales Act, N.J.S.A. 17:16C-1 et seq.; and (3) the examination charges imposed on trust companies and other trust departments.

In the adoption published elsewhere in this Register, effective April 15, 1991, the Department imposed an assessment on trust assets equal to 0.04 of one cent per $100.00 of total assets. Based on comments received incident to that proposal, the Department has decided to reduce the assessment imposed on trust assets and to increase the per diem examination charge imposed on trust companies and trust departments from $300.00 to $325.00. The proposed amendments set the yearly rate for discretionary trust assets at 0.03 of one cent per $100.00 of total discretionary trust assets up to $5 billion, .02 for discretionary trust assets between $5 billion and $20 billion, and .01 for discretionary trust assets of more than $20 billion. The proposed amendments set the yearly rate for non-discretionary trust assets at 0.02 of one cent per $100.00 of total non-discretionary trust assets up to $5 billion, .01 for non-discretionary trust assets between $5 billion and $20 billion, and no assessment for non-discretionary trust assets of more than $20 billion. Discretionary and non-discretionary trust assets are currently segregated on the report of trust assets filed with the Department, and the regulation defines these terms accordingly.

Recognizing the specialized expertise required to perform trust examinations, the Department also proposes to increase the per diem examination fee on trust companies and trust departments from $300.00 to $325.00. The proposal does not include any changes in the other examination fees.

In addition to increasing the assessments on depositories, the Department also recently increased the biennial fees charged licensees. In those recently adopted increases, the Department did not increase the license fees imposed on motor vehicle installment sellers and home repair con-

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tractors. In these proposed amendments, the Department proposes to increase the biennial fees charged motor vehicle installment sellers and home repair contractors from $150.00 to $200.00.

Social Impact

The proposed amendments would reduce assessments on trust assets, with an increase in the per diem examination charge. This is an attempt by the Department to equitably impose lower charges on those institutions holding assets requiring less supervision and thereby costing less to supervise.

The proposed changes will increase the license fees imposed on motor vehicle installment sellers and home repair contractors. This will shift the financial responsibility for the regulation of these licensees from the general taxpaying public to the licensees who benefit financially from conducting these businesses in this State.

Economic Impact

The proposed amendments will have a positive economic impact on depositories holding large amounts of trust assets, and a negative economic impact on institutions which require longer examinations and licensed motor vehicle installment sellers and home repair contractors. In particular, the relative assessment upon trust assets will be reduced as the amount of trust assets held by an institution increases. The biennial license fees imposed on motor vehicle installment sellers and home repair contractors will increase from $150.00 to $200.00.

To the extent that the proposed changes have a negative economic impact on licensees and trust companies, there will be a corresponding positive economic impact on the Department and the State.

Regulatory Flexibility Analysis

Most trust companies, home repair contractors and motor vehicle installment sellers are small businesses, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments impose additional charges on these licensees, and on some of the trust companies. These increases are based on the services provided to these businesses, and not on their size. The increases are necessary to reimburse the State for the costs associated with these services. Accordingly, the Department does not differentiate the fees based on the size of the business.

The proposed changes in the assessments will not require trust companies or depositories to file additional reports because the filing necessary to impose these assessments is already required.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

3:1-6.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"Discretionary trust assets" means the discretionary trust assets reported to the Department in the report of trust assets.

. . .

"Non-discretionary trust assets" means the non-discretionary trust assets reported to the Department in the report of trust assets.

. . .

3:1-6.2 Assessments

(a) Every bank as defined in N.J.S.A. 17:9A-1(1), every savings bank as defined in N.J.S.A. 17:9A-1(13) and every State association as defined in N.J.S.A. 17:12B-5(1) shall be assessed a yearly fee of 0.44 of one cent per $100.00 of total assets, except that trust assets shall be assessed a yearly fee [of .04 of one cent per $100 of total assets.] **in accordance with the following schedule:**

Trust Assets of each type	Discretionary (cents per $100 of assets)	Non-Discretionary (cents per $100 of assets)
0-$4,999,999,999	**.03**	**.02**
$5 billion-$20 billion	**.02**	**.01**
more than $20 billion	**.01**	**0**

(b) The fee [imposed on other than trust assets] shall be assessed at [a rate of 0.22 of one cent per $100.00 of total assets] **one-half the yearly rate** as of December 31 and [a rate of 0.22 of one cent per $100.00 of total assets] **one-half the yearly rate** as of June 30 of each calendar year. [The fee imposed on trust assets shall be assessed at a rate of 0.02 of one cent per $100.00 of total assets as of December 31 and a rate of 0.02 of one cent per $100.00 of total assets as of June 30 of each calendar year.]

3:1-6.6 Examination Charge

(a) The individual per diem per person examination charge for an examination of a bank, savings bank, savings and loan association[,] **or** holding company [or trust company] shall be $300.00.

(b) The individual per diem per person examination charge for an examination of a licensee, credit union, **trust company or trust department of a bank, savings bank or savings and loan association,** or any person not specified in this section shall be $325.00.

3:23-2.1 Licensees

The following table indicates the license fees established by the Commissioner of Banking for annual and biennial license periods, the maximum biennial license fees permitted by law and the specific statutory sections affected by the establishment of such biennial and annual license fees.

Licensees	STATUTORY Maximum Biennial Fee	Biennial Fee	Annual Fee
Consumer Loan (N.J.S.A. 17:10-3 & 9)	$1,000.00	$1,000.00	$500.00
Foreign Money Remitter (N.J.S.A. 17:15-1)	$1,000.00	$1,000.00	$500.00
Check Casher (N.J.S.A. 17:15A-4)	$1,000.00	$1,000.00	$500.00
Check Seller (N.J.S.A. 17:15B-7)	$1,200.00	$1,200.00	$600.00
Retail Installment Sales			
(a) Sales Finance Company (N.J.S.A. 17:16C-7)	$1,000.00	$1,000.00	$500.00
(b) Motor Vehicles Installment Seller (N.J.S.A. 17:16C-8)	$ 300.00	[$150.00] **$200.00**	[$75.00] **$100.00**
(c) Home Financing Agency (N.J.S.A. 17:16C-82(a))	$ 600.00	$ 600.00	$300.00

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(d) Home Repair Contractor (N.J.S.A. 17:16C-82(b))	$ 300.00	[$150.00] **$200.00**	[$75.00] **$100.00**
(e) Home Repair Salesman (N.J.S.A. 17:16C-82(c))	$ 60.00	$ 60.00	$ 30.00
Insurance Premium Finance Company (N.J.S.A. 17:16D-4)	$1,000.00	$1,000.00	$500.00
Pawnbroker (N.J.S.A. 45:22-4)	$ 800.00	$ 600.00	$300.00

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Neighborhood Preservation Balanced Housing Program

Proposed Amendments: N.J.A.C. 5:14-1.1, 1.2, 1.3, 1.4 and 4.5

Proposed Repeal and New Rules: N.J.A.C. 5:14-2.1, 3.1 and 3.2

Proposed New Rules: N.J.A.C. 5:14-1.5, 1.6, 2.2, 2.3 and 3.3 through 3.12; and 5:14-3A

Authorized By: Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-320.

Proposal Number: PRN 1991-190.

Submit written comments by May 15, 1991 to:
Michael L. Ticktin
Chief of Legislative Analysis
Department of Community Affairs
CN 802
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Balanced Housing rules were originally published and adopted in 1985. Those rules governed an initial competitive cycle of Balanced Housing applications. These proposed amendments and new rules reflect the Department's policy of accepting applications, except Neighborhood Rehabilitation applications, on a continuing basis. Neighborhood Rehabilitation will be funded on a competitive basis.

The previous Balanced Housing rules were structured in anticipation of two project types: Neighborhood Rehabilitation; and New Construction, Substantial Rehabilitation and Conversion. Although the majority of the applications received fit these categories, there were many that did not. As a result, these new rules provide for 10 categories of projects.

Neighorhood Rehabilitation remains the primary vehicle for the moderate rehabilitation of owner-occupied housing. A Landlord category has been created in order to accommodate not-for-profit and investor owners desiring to do moderate rehabilitation.

The New Construction, Substantial Rehabilitation and Conversion category has been divided into four project types: Homeownership Projects; Rental Projects; Purchase/Rental Projects; and Single Room Occupancy Projects. The following project types have been added: Acquisition/Rehabilitation; Permanent Housing for the Handicapped; and Section 202 and Public Housing new construction projects. In addition, a Discretionary cateogry has been added to allow for new and innovative projects which do not fit into any other category.

The initial application cycle allowed the Department to negotiate on a case by case basis the subsidy for New Construction, Substantial Rehabilitation and Conversion projects. The proposed rules give maximum subsidy amounts and allowable costs.

Other changes of note include the following:

In accordance with Council on Affordable Housing (COAH) rules and the 1985 Fair Housing Act, applicants are restricted to municipalities that have petitioned for or have received substantive certification from COAH, municipalities with a judicially approved compliance agreement, municipalities subject to a builder's remedy, receiving municipalities for a Regional Contribution Agreement and municipalities that are, or have been, eligible for Urban Aid since Fiscal Year 1988.

The requirement that 50 percent of the units funded be affordable to low income households has been waived for Homeownership Projects only. This is a result of the problems associated with qualifying low income households for a mortgage. However, the Department is adding a requirement that the average range of affordability for homeownership units not exceed 57.5 percent. Range of affordability is defined as the household income, expressed as a percentage of the median income, at which a given unit is affordable. This new requirement, without the waiver, also applies to Rental, Purchase/Rental and Single Room Occupancy Projects.

On Neighborhood Rehabilitation Projects, the Department will now require that municipalities match the Department's grant on a one (municipal dollar) to two (State dollars) or one to one basis depending on the level of distress. Municipalities in the first 40 percent of the Municipal Distress Index and those receiving Urban Aid are exempted from the matching requirement.

The funding priorities established by the Department have been incorporated into the proposed rules. Additionally, language from the agreement executed between the Department and the municipality receiving funds has been included in the rules to simplify the contract process.

Although not included in the proposed rules which follow, the Department is soliciting public comment regarding the advisability of prohibiting the use of Balanced housing funds in connection with a Regional Contribution Agreement.

Social Impact

The Balanced Housing Program provides housing for low and moderate income households. The implementation of these new rules will increase these housing opportunities both by expanding the categories of projects funded and by making the funding process simple and more predictable.

Economic Impact

These new rules will have a positive economic impact. New housing construction will create jobs. The housing units created and rehabilitated will generally add to the municipal tax base.

Regulatory Flexibility Analysis

N.J.A.C. 5:14 contains requirements regarding grants made by the Department through the Neighborhood Preservation Balanced Housing Program to municipalities. Small businesses are not directly regulated by this chapter; however, the municipalities contract with small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., to perform the required construction or rehabilitation. The proposed amendments generally expand the work opportunities provided for small businesses and expand the tax base within the eligible communities, which has the potential for positive effect on any small businesses within that community. Since the businesses affected by the rules are all small businesses, any differential treatment based on business size would not be appropriate.

Full text of the proposal follows (additions shown in boldface **thus**; deletions shown in brackets [thus]):

5:14-1.1 Purpose

The purpose of the Neighborhood Preservation Balanced Housing Program shall be to [deliver] **assist in the delivery of** housing affordable to low and moderate income households in viable neighborhoods in fulfillment of Section 20 of the Fair Housing Act of 1985. Consistent with the Act, a substantial percentage of Program awards shall be made to projects and programs in those municipalities receiving State aid pursuant to P.L. 1978, c.14 ([C.] **N.J.S.A.** 52:27D-178

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et seq.). [The Department shall also target a percentage of Program awards to the special needs of "at-risk" groups, including the elderly, handicapped and single-parent families.]

5:14-1.2 Eligible applicants

(a) Municipal governments shall be the only eligible applicants to the Neighborhood Preservation Balanced Housing Program[; except that the municipality may designate other public, private and/or not-for-profit development entities as part of its application].

(b) [Prior to July 1, 1989, any municipality shall be eligible to apply for funds so long as such funds are to be used to satisfy all or part of the municipality's low and moderate income housing obligation or indigenous need. On or after July 1, 1989, applications] **Applications** shall only be accepted from municipalities meeting at least one of the following criteria:

1.-5. (No change.)

6. The municipality [is receiving] **has, at any time since Fiscal Year 1988, been eligible to receive** State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.).

[(c) Prior to July 1, 1989, the Department shall grant absolute funding priority to municipalities meeting one or more of the criteria set forth in (b)1 through 6 above.]

5:14-1.3 Eligible activities

(a) [The Department shall award loans and/or grants for those activities listed below. For any eligible activity that does not specifically require 100 percent occupancy by low and moderate income households, the Department shall fund a project if it includes a substantial percentage of low and moderate income units. A substantial percentage shall generally be a percentage which is larger than 20 percent.] For Program awards, **eligible activities shall include those activities listed below:**

1.-2. (No change.)

3. Conversion of nonresidential space to residential purposes provided [a substantial percentage] **more than 20 percent** of the resulting housing units are to be occupied by low and moderate income households;

4.-6. (No change.)

7. Other housing programs for low and moderate income housing including infrastructure projects directly facilitating the construction of low and moderate income housing not to exceed a reasonable percentage of the construction **costs** of the low and moderate income housing to be provided.

5:14-1.4 Definitions

The following words and terms, as used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

"Affordable" means capable of being afforded without undue burden by an eligible household. A rental unit shall be considered "affordable" if the monthly rent, including utilities, does not exceed 30 percent of an eligible household's income. Homeowner units shall be considered "affordable" if the monthly carrying costs, including principal and interest (based on a mortgage equal to 95 percent of the purchase price), taxes, insurance and condominium fees, do not exceed 28 percent of an eligible household's income.

"Balanced Housing units" means those units within a project receiving Balanced Housing funds which are subject to affordability controls in accordance with N.J.A.C. 5:14-4 or a mortgage in accordance with N.J.A.C. 5:14-4, regardless of whether such controls or mortgages are waived or modified.

"Division" means the Division of Housing and Development in the Department of Community Affairs.

"Eligible household" means a low or moderate income household.

"Eligible neighborhood" means a neighborhood that will be viable, as defined by N.J.S.A. 52:27D-152 et seq. (P.L. 1975, c.249), after the implementation of the proposed project.

"Equity" means the total cost of a project, minus subsidies and any loans secured by the project. It may include cash, real estate and professional fees dedicated to the project.

["Housing Region" shall mean a geographic area of no fewer than two nor more than four contiguous whole counties, as defined in "Mount Laurel II Challenge and Delivery of Low-Cost Housing" published by the Rutger's Center for Urban Policy Research.]

"Low income household" [shall mean] **means** a household whose gross annual earnings are [less] **not more** than 50 percent of the median income [for the region] **as adjusted by geographic region and family size in accordance with HUD Section 8 Income Guidelines or N.J.A.C. 5:92. (Where variation occurs, N.J.A.C. 5:92 shall govern.)**

"Moderate income household" [shall mean] **means** a household whose gross annual earnings are [no less] **greater** than 50 percent [or more] **and less** than 80 percent of the median income [for the region] **as adjusted by geographic region and family size in accordance with HUD Section 8 Income Guidelines or N.J.A.C. 5:92. (Where variation occurs, N.J.A.C. 5:92 shall govern.)**

"Moderate rehabilitation" means any rehabilitation costing less than 50 percent of the physical value of the unit.

"Neighborhood" means an area which is recognized as a distinct entity by virtue of certain factors, such as: definite boundaries, natural or man-made; history; architecture; facilities which attract people within a certain radius; or a shared sense of identity or social cohesion. This definition is equally applicable to neighborhoods in urban, suburban, and rural communities.

"New unit" means any unit that has been constructed or substantially rehabilitated within the three years preceding submission of an application, meets all applicable code requirements and has not been occupied since the time of its construction or rehabilitation.

"Physical value" means the current replacement cost of a structure as calculated using the latest edition of the "Building Valuation Data Report", incorporated herein by reference, as amended and supplemented, published by BOCA International, Inc., 4051 West Flossmoor Road, Country Club Hills, Ilinois 60477-5795.

"Range of affordability" means the household income, expressed as a percentage of the median income, at which a given unit is affordable.

"Senior citizen" means any person age 62 years or older.

"Single room occupancy unit (SRO)" means a unit within a structure in which households maintain private rooms yet may share kitchen and plumbing facilities, central heat and common areas.

"Substandard" means when used to characterize a structure or dwelling unit, that the local construction official has certified that health and safety code violations exist and that, in order to abate those violations, one or more of the following major systems must be replaced or extensively repaired: roof, electrical, plumbing, sanitary plumbing, heating, or load-bearing structural systems.

"Substantial rehabilitation" means any rehabilitation of a housing unit which will both cost more than 50 percent of the physical value of the unit and result in the entire structure in which that unit is located being brought into compliance with the provisions of the State Uniform Construction Code (N.J.S.A. 52:27D-119 et seq., N.J.A.C. 5:23 and the adopted subcodes) applicable to newly-constructed units.

5:14-1.5 Waiver

Any applicant desiring a waiver or release from the express requirements of any provision of this chapter may make such request, in writing, to the Division. A waiver shall be granted only by the Division Director in writing and then only when such waiver does not contravene the provisions of the Fair Housing Act. The decision of the Division Director shall be final.

5:14-1.6 Maximum allowable project cost

(a) Maximum allowable project cost for new construction shall be the lesser of the actual project cost of the Balanced Housing units or the sum of the items in (a) through 6 below.

1. Total residential square feet as applied to the Balanced Housing units multiplied by:

i. $52.00 for modular construction;

ii. $64.00 for stick built townhouse construction;

iii. $76.00 for mid-rise construction; and

iv. $88.00 for high-rise construction;

2. The cost of nonresidential space, as determined by the most recent issue of the Building Valuation Data Report with an annual allowance of 22.5 percent for professional and financial services and other "soft" costs;

3. Land calculated at the lowest of:

i. The actual acquisition price, if under option or if acquired within the last two years;

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ii. Appraised value; or

iii. $20,000 per dwelling unit;

4. Contractor fee as determined in accordance with Appendix D to this chapter, incorporated herein by reference;

5. Developer fee and overhead fee of for-profit developers only shall be calculated as follows:

i. For Homeownership Projects, a developer fee and overhead not to exceed 10 percent of the items in (a)1 through 4 above;

ii. For Rental Projects receiving Low Income Housing Tax Credits, a developer fee and overhead not to exceed 20 percent of the items in (a)1 through 4 above;

iii. For Rental Projects not receiving Low Income Housing Tax Credits, a developer fee and overhead not to exceed 14 percent of the items in (a)1 through 4 above;

6. In lieu of developer fee and overhead, a not-for-profit developer may take up to a five percent administrative fee.

(b) The maximum allowable project cost for substantial rehabilitation or conversion projects shall be the lesser of:

1. The sum of the items in (a)1 through 5 above multiplied by .9; or

2. Actual project cost.

(c) The Department shall reserve the right to review all project costs to ensure reasonableness and to lower the maximum allowable project subsidy accordingly.

5:14-2.1 Funding cycles and application procedures

(a) [The Department shall establish a deadline for one competitive funding cycle per year. Notice of such deadline shall be published in the New Jersey Register. During the competitive funding cycle, the Department shall accept applications from each housing region. Fundable projects shall receive firm or conditional commitments] **With the exception of applications for Neighborhood Rehabilitation, the Department shall accept applications on a continuous basis.**

(b) [If there are unallocated funds, the Department shall accept additional applications and make funding commitments to projects on a first come first served basis subject to the priorities outlined in 5:14-1.1.] **The Department shall hold one competitive cycle each year for Neighborhood Rehabilitation projects. Notice for the competitive cycle shall be provided by the Department to each of the municipalities listed in Appendix A.**

[(c) A municipality may submit unlimited applications, except that only one application per year shall be for a project designed to rehabilitate individual structures scattered through a designated neighborhood.

(d) The maximum project award shall be $350,000. The Department may waive this limitation for what it considers compelling reasons.

(e) Multi-year commitments shall be considered by the Department on a case-by-case basis.]

5:14-2.2 Priorities

(a) In general, projects shall be funded in the order in which they are ready to go to contract.

(b) In the event that funds are limited, the following priority system will be used in order to evaluate projects.

1. First priority shall be given to:

i. New or acquired units for the handicapped, either independent or group homes;

ii. New rental family units in urban aid municipalities and units produced by public housing authorities, except for replacement public housing units; and

iii. Single Room Occupany Projects.

2. Second priority shall be given to:

i. New rental family units in non-urban aid municipalities; and

ii. New for-sale family units in urban aid municipalities.

3. Third priority shall be given to:

i. New for-sale family units in non-urban aid municipalities;

ii. Landlord projects with private not-for-profit sponsors, with the exception of projects financed with HUD loans; and

iii. Acquisition/rehabilitation projects.

4. Fourth priority shall be given to rental and for-sale senior citizen projects, including HUD 202 senior citizen projects.

5. Fifth priority shall be given to:

i. Replacement of public housing units;

ii. Landlord projects with private sponsors and public not-for-profit sponsors and projects financed with HUD loans; and

iii. Inclusionary developments in which Balanced Housing funds are used to lower the range of affordability.

(c) Additionally, the following evaluation criteria will be considered in reviewing applications for funding:

1. Whether the project will assist the municipality in achieving substantive certification from the Council on Affordable Housing or a judicially approved compliance agreement;

2. Whether there is any other source of funds which can be used to undertake this activity;

3. Whether or not the project would be achieved without Balanced Housing funds;

4. Whether funding this project would be in keeping with allocating funds in accordance with regional need as determined by the Council on Affordable Housing; and

5. Whether affordability controls for the project will be in place for a longer period than would be required by N.J.A.C. 5:14-4.

(d) The use of Balanced Housing funds to provide replacement housing generally shall not be considered to be the best use of these funds.

(e) Balanced Housing funds shall not be used to convert public housing units to homeownership.

(f) The following criteria shall be favorably considered in evaluating applications for Neighborhood Rehabilitation projects:

1. Indication of community support as evidenced by:

i. Intent to develop an in-house community development capacity, if appropriate; and

ii. Dedication of funds for housing construction beyond the program's matching requirement.

2. The existence of an active, systematic code enforcement program;

3. In ongoing programs, a backlog of applicants evidencing need for additional funding;

4. The use of Balanced Housing funds to support the activities of a Neighborhood Preservation Program or Small Cities Program or used in neighborhoods where rehabilitation is needed to support another Balanced Housing project;

5. The existence of extensive indigenous need; and

6. Clear evidence of need as demonstrated by placement on the Municipal Distress Index.

5:14-2.3 Allocation of funds

(a) Until March 31 of each fiscal year, 60 percent of the funds available for that fiscal year shall be reserved for projects in priorities one and two; 15 percent shall be reserved for projects in priorities three and four; and five percent shall be reserved for projects in priority five. Five percent shall be reserved for amendments to existing contracts. Fifteen percent, but not to exceed $2.5 million, will be set aside for Neighborhood Rehabilitation.

(b) Funds not allocated by March 31 shall be available for all projects.

(c) All Balanced Housing funds will be allocated to specific projects, not to developers, applicant municipalities or geographic regions. Any reallocated funds will be subject to the same funding priorities and conditions as were the original funds.

(d) In order to maximize the distribution of funds, the Commissioner may limit the maximum amount of funding in any one municipality.

5:14-3.1 [Threshold criteria] **General provisions**

[(a) In order to be eligible for funding, an applicant shall demonstrate that:

1. At least 50 percent of housing units in a project will be affordable to low income households;

2. There is a plan to ensure that the required percentage of the program's beneficiaries are low and moderate income;

3. There is a plan to ensure that units will remain affordable and occupied by low and moderate income households;

4. The applicant or development entity has control of the project site;

5. The municipality has declared its intent to submit its fair share housing plan to the Affordable Housing Council or has agreed to

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a court ordered settlement of its low and moderate income housing obligation;

6. There is sufficient need for the program and the resources committed to the project are commensurate to the need.]

(a) Successful applicants to the Neighborhood Preservation Balanced Housing Program shall be invited to enter into grant agreements with the Department. Any such agreement shall be subject to the terms and conditions set forth in this subchapter, including the specific provisions set forth in N.J.A.C. 5:14-3.13.

(b) All projects proposed for funding must be in an eligible neighborhood. Municipalities with an indigenous need of 30 units or less may, for the purpose of a Neighborhood Rehabilitation application, designate the entire municipality.

(c) Applicants to the Balanced Housing Program shall be required to demonstrate their ability, both administrative and financial, to carry out the proposed project.

1. The qualifications of key participants, including the sponsor/developer, consultant, administering agent and the municipality, will be examined. Failure to perform by any of those participants in past contracts with the Department may be grounds for disqualifying an application.

(d) At least 50 percent of the low and moderate income units to be funded shall be affordable to low income households. The following are exempt from this requirement:

1. Homeownership projects which are part of a 100 percent affordable development; and

2. Neighborhood Rehabilitation Projects funded in municipalities with an indigenous need of 30 or less.

(e) With the exception of owner-occupied units funded through Neighborhood Rehabilitation Projects, units funded through the Balanced Housing Program must remain affordable for 10 years in municipalities listed in Appendix A to this chapter or 20 years in all other municipalities.

(f) If a sponsor/developer is undertaking substantial rehabilitation and one or more of the units is currently occupied, the occupied unit(s) shall be eligible only if the household occupying the unit is certified to be income eligible. If any current occupants will be relocated, this action must be completed in accordance with an approved Workable Relocation Assistance Plan (WRAP), pursuant to N.J.S.A. 20:4-1 et seq. and N.J.S.A. 52:31B-1 et seq.

(g) The methodology for determining the maximum Balanced Housing subsidy is explained in N.J.A.C. 5:14-3.3 through 3.12 for each type of project. Notwithstanding such provisions, the Department may, at its discretion, award less than the maximum subsidy, structure the assistance as a loan, with or without interest, or provide additional assistance for short term financing, including construction and/or bridge loans, if needed, to ensure project feasibility.

(h) The amount of Balanced Housing funds reserved for a project shall be based on the information provided in the application and shall fund only the gap between project cost and other revenue. When used during construction, Balanced Housing funds shall be allocated as contingency to be used only to the extent necessary. The developer must submit a detailed cost break out and, upon completion of construction and prior to final release of funds, cost certification by an independent public accountant.

1. If a proposed project is located in a municipality not listed in Appendix A and is to be undertaken by a for-profit developer, the Department's subsidy shall be based upon the number of units representing an increase above 20 percent affordable units or the number of units negotiated by the municipality and the developer, whichever is greater; and/or the subsidy required to lower the range of affordability below that which is eligible for credit by the Council on Affordable Housing.

(i) In all instances, Balanced Housing funds shall be awarded to the municipality as a grant. With the exception of Neighborhood Rehabilitation and Landlord Projects, the municipality shall provide Balanced Housing funds for assistance to a rental unit in the form of a loan to the developer which shall be assigned to the Department. All terms and conditions of the loan agreement shall be at the discretion of the Department.

(j) The maximum interest rate shall be equal to the interest rate on a 30 year Treasury bond at the time of commitment for for-profit sponsors and half of that rate for not-for-profit sponsors.

(k) A for-profit developer must provide at least 10 percent equity and may take out no more than eight percent return on equity yearly from project cash flow until the Balanced Housing loan has been repaid.

(l) A commitment by the Department to fund a project shall not constitute a commitment to subordinate the Balanced Housing loan at a future date. However, the Department shall consider subordination, provided that the sponsor/developer provides evidence to the satisfaction of the Department that the project income can service an increased level of private debt, and that some public benefit will result from the subordination.

1. The sponsor/developer shall submit a request for subordination to the Division Director. The decision of the Division Director shall be presented in writing and shall be final. The request for subordination shall include:

i. An up-to-date income and expense statement;

ii. A mortgage commitment regarding the proposed refinancing;

iii. Verification that reserves are at required levels;

iv. A statement regarding project vacancies, turnover and anticipated major expenditures; and

v. Explanation of the public benefit that will occur. It shall be considered to be of public benefit if refinancing the project results in cash that will be utilized to:

(1) Perform necessary repairs in the project that cannot be funded by the accumulated reserves;

(2) Provide a source of development funding to create additional units that will be affordable to low and moderate income occupants; or

(3) Allow the sponsor/developer to increase the time period during which units shall be affordable to low and moderate income households.

5:14-3.2 [Competitive criteria] **Types of projects**

[(a) Eligible applications shall be reviewed on the basis of project specific criteria and the Department's assessment of municipal need. In evaluating municipal need, the Department shall consider the municipality's ranking on the State Community Need Index and the municipality's low and moderate housing obligation (as determined by the Department). The Department shall give priority to applications from municipalities receiving State aid pursuant to P.L. 1978, c. 14 (C. 52:27D-178 et seq.). Projects will be favored which:

1. Provide more than 50 percent of the housing units to low income households or provide housing units to a diversity of income groups within the low and moderate income ranges;

2. Use Neighborhood Preservation Balanced Housing funds and other subsidies most efficiently;

3. Are successful in containing total project costs;

4. Include a diversity of bedroom types of reasonable size;

5. Demonstrate progress in developing construction and administrative plans;

6. Demonstrate progress in receiving financial commitments to the proposed project;

7. Are most likely to result in a stable neighborhood by addressing the needs of its residents.]

(a) The Department shall only fund projects falling into at least one of the following categories, which are further described in N.J.A.C. 5:14-3.3 through 3.12:

1. Permanent Housing for the Handicapped Projects;

2. Rental Projects;

3. Purchase/Rental Projects;

4. Single Room Occupancy Projects;

5. Homeownership Projects;

6. Acquisition/Rehabilitation Projects;

7. Section 202 and Public Housing New Construction Projects;

8. Neighborhood Rehabilitation Projects;

9. Landlord Projects; and

10. Discretionary/Demonstration Projects.

5:14-3.3 Permanent Housing for the Handicapped Projects

(a) The Balanced Housing Program may provide funding for the construction, substantial rehabilitation or conversion of units that provide permanent housing for income-eligible handicapped persons.

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Eligible projects must qualify for credit from the Council on Affordable Housing. Eligible projects may include, but are not limited to, residential health care facilities as regulated by the New Jersey Department of Health; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements.

(b) In such projects, the form and amount of Balanced Housing assistance shall be at the discretion of the Department, but shall not exceed the amount provided by other public and private funding sources (that is, 50 percent of total project cost).

5:14-3.4 Rental Projects

(a) The Balanced Housing Program may provide assistance to eligible municipalities for use by for-profit or not-for-profit housing sponsors who provide new rental housing units for occupancy by low and moderate income households. Eligible activities shall include new construction, substantial rehabilitation and the conversion of non-residential structures. In the case of a not-for-profit developer, Balanced Housing funds may be provided to a project during the development phase. In the case of a for-profit developer, Balanced Housing funds may be used to reduce the amount of the permanent mortgage upon project completion.

(b) The average range of affordability for the units funded shall not exceed 57.5 percent.

(c) The maximum allowable subsidy for a rental project shall be determined in accordance with Appendix C to this chapter, incorporated herein by reference.

(d) Applicants shall be required to apply for Low Income Housing Tax Credits or to demonstrate good cause not to seek the credit. If the credit is obtained, the Balanced Housing subsidy shall be reduced accordingly.

(e) Applicants for rental projects shall demonstrate control of the project site, whether by holding title, by a sales contract, by an option to purchase or by any other means that the Department may approve.

(f) Applicants may combine a rental project with a homeownership project.

5:14-3.5 Purchase/Rental Projects

(a) The Balanced Housing Program may provide assistance to municipalities on behalf of not-for-profit sponsors for the purpose of acquiring new units and maintaining them as rental units for occupancy by low and moderate income households. Balanced Housing funds shall be provided to the project at the time of purchase in order to reduce the amount of the permanent mortgage.

(b) The average range of affordability for the units funded may not exceed 57.5 percent.

(c) The maximum allowable subsidy for a purchase/rental project shall be determined in accordance with Appendix C.

(d) Applicants shall be required to apply for Low Income Housing Tax Credits or to demonstrate good cause for not seeking the credit. If the credit is obtained, the Balanced Housing subsidy shall be reduced accordingly.

5:14-3.6 Single Room Occupancy Projects

(a) The Balanced Housing Program may provide assistance to eligible municipalities for use by for-profit or not-for-profit housing sponsors who provide new single room occupancy units for low and moderate income households. Eligible activities include new construction, substantial rehabilitation and the conversion of nonresidential structures. In the case of a not-for-profit developer, Balanced Housing funds may be provided to the project during the development phase. In the case of a for-profit developer, Balanced Housing funds may be used to reduce the amount of the permanent mortgage upon project completion.

(b) The average range of affordability for units funded may not exceed 57.5 percent.

(c) The maximum allowable subsidy for a Single Room Occupancy Project shall be determined in accordance with Appendix C.

(d) Applicants shall be required to apply for Low Income Housing Tax Credits or to demonstrate good cause for not seeking the credit. If the credit is obtained, the Balanced Housing subsidy shall be reduced accordingly.

(e) Applicants must demonstrate control of the project site, whether by holding title, by a sales contract, by an option to purchase or by any other means which the Department may approve.

5:14-3.7 Homeownership Projects

(a) The Balanced Housing Program may provide assistance to eligible municipalities for use by for-profit and not-for-profit housing sponsors who provide homeownership opportunities to low and moderate income households through new construction, substantial rehabilitation or the conversion of nonresidential structures. Balanced Housing funds are provided to the project as a capital grant after the units have been completed. In the case of a not-for-profit developer, funds may be used during the development phase.

(b) Qualifying units must be new and must be sold at affordable prices.

(c) The average range of affordability for the units funded may not exceed 57.5 percent.

(d) Condominium and cooperative as well as fee simple ownership forms may be eligible.

(e) The maximum subsidy for homeownership projects shall be determined in accordance with Appendix B to this chapter, incorporated herein by reference.

(f) Applicants must demonstrate control of the project site, whether by holding title, by a sales contract, by an option to purchase or by any other means that the Department may approve.

(g) Applicants may combine a homeownership project with a rental project.

5:14-3.8 Acquisition/Rehabilitation Projects

(a) The Balanced Housing Program may provide assistance to eligible municipalities for use by not-for-profit sponsors wishing to acquire or acquire and moderately rehabilitate existing, vacant housing for occupancy by low and moderate income households. Occupancy may be either rental or homeownership as long as the unit is affordable. Units acquired up to two years prior to the application that are substandard at the time of application are eligible.

(b) The maximum Balanced Housing subsidy for an Acquisition/Rehabilitation Project shall be $10,000 for a one bedroom unit and $2,500 for each additional bedroom, plus $5,000 per unit if the household to be served is senior citizen, handicapped or single parent.

(c) All units assisted must be vacant at the time of acquisition. The Division may waive this requirement if the population to be served is an elderly, handicapped or single-parent household or if the applicant can demonstrate that this project will prevent the imminent loss of affordable units and the displacement of low and moderate income households. Condominium conversion is not, in and of itself, considered evidence of imminent loss.

(d) Upon occupancy, units must meet HUD Section 8 Housing Quality Standards, incorporated herein by reference, as amended and supplemented, available from the Department of Housing and Urban Development, 451 Seventh St. SW, Washington, D.C. 20410, or any applicable State or local housing code that is more stringent. The Sponsor need not identify specific buildings when applying for funds but should identify a neighborhood or group of buildings.

(e) Except as noted in (c) above, the acquisition or acquisition and rehabilitation of units that are already in standard condition and affordable to low and moderate income households shall only be permitted insofar as the proposed activity will lower the range of affordability.

(f) Sponsors of rental projects shall be required to demonstrate ongoing management capacity and financial feasibility of the project for the length of the control period.

5:14-3.9 Section 202 and Public Housing New Construction Projects

(a) The Balanced Housing Program may provide assistance to municipalities applying on behalf of public housing authorities and not-for-profit sponsors to construct Federal Section 202 projects and public housing new construction projects as authorized by the U.S. Housing Act of 1937 (42 U.S.C. 1401 et seq.). These grants are subject to the following limitations:

1. The total Balanced Housing subsidy shall not exceed 15 percent of the total project cost;

2. The improvements shall be reasonable and functional and shall benefit the residents of the project; and

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3. The improvements to be funded by Balanced Housing shall either be prohibited by the HUD cost containment policy or add to the project cost beyond the amount that can be supported by the HUD loan.

(b) Eligible Balanced Housing costs may include the following: outdoor lighting, access roads, land, air conditioning, sprinkler systems, on and off-site improvements, intercoms, and directly related "soft" costs, such as fees for professional and financial services, within standard underwriting limits, landscaping to buffer the building, and improvements required by applicable municipal codes that are more strict than required by the State, provided that a responsible municipal official submits an adequate written justification.

1. Cosmetic and facade improvements, and improvements made solely for the purpose of allaying public opposition or to improve the esthetics of the surrounding neighborhood, are ineligible.

(c) Applications for a Section 202 or Public Housing New Construction Project shall include a conditional or final commitment from HUD.

5:14-3.10 Neighborhood Rehabilitation Projects

(a) A Neighborhood Rehabilitation Project shall be one in which a municipality is funded for the purpose of identifying and moderately rehabilitating substandard units in one-to-four family owner occupied structures within a specified eligible neighborhood.

(b) Municipal funds shall be committed to implement a Neighborhood Rehabilitation Project as follows:

1. For municipalities that rank in the first 40 percent of the Municipal Distress index published and revised periodically by the New Jersey Department of the Treasury, Office of Management and Budget (municipalities ranked 1-227), and municipalities eligible to receive State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.), no commitment of funds is required.

2. For municipalities that rank from 41 percent to 70 percent on the Municipal Distress Index (ranked 228-397), and that are not eligible for State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.), one non-Balanced Housing dollar shall be committed to match every two Balanced Housing dollars.

3. For municipalities that rank from 71 percent to 100 percent on the Municipal Distress Index (ranked 398-567), one non-Balanced Housing dollar must be committed to match every Balanced Housing dollar.

(c) Funds committed as matching funds shall be either local revenues or derived from non-State grants received by the municipality. Commitments from homeowners or from lending institutions to provide home improvement loans do not qualify.

(d) Municipal funds committed as matching funds must be used to pay actual costs of administration and/or rehabilitation in the project. Ancillary services, improvement of the target area (such as roads and sewers) and "soft" costs, such as fees for professional and financial services, do not qualify.

(e) Matching funds shall be subject to the requirements of this subchapter, except that any such funds provided as direct assistance to homeowners may carry a lower interest rate and/or a shorter term. Matching funds provided as loans to homeowners shall be subordinate to the Balanced Housing loan.

(f) The maximum Balanced Housing grant to a municipality under a Neighborhood Rehabilitation Agreement shall be the least of $300,000 for continuing Neighborhood Rehabilitation projects or $240,000 for first year projects or $15,000 times the number of units to be rehabilitated. Of that amount, the municipality may use the lesser of 16 percent or $1,920 per unit to administer the program.

1. For municipalities required to provide a match of one non-Balanced Housing dollar for every two Balanced Housing dollars, the maximum Balanced Housing grant shall be $200,000 for continuing Neighborhood Rehabilitation projects or $160,000 for first year projects.

2. For municipalities required to provide a match of the non-Balanced Housing dollar for every Balanced Housing dollar, the maximum grant shall be $150,000 for continuing Neighborhood Rehabilitation projects or $120,000 for first year projects.

(g) Applicants shall demonstrate to the satisfaction of the Department the existence of an active, systematic code enforcement program or a commitment to establish one within 90 days of the start date of a Balanced Housing contract.

(h) Any agent administering a Balanced Housing Neighborhood Rehabilitation Project must complete 75 percent of the units to be rehabilitated before the municipality may submit an application on behalf of that agent for an additional Neighborhood Rehabilitation Project. Prior to the Department funding such an application, the agent must have obligated 100 percent of the original grant.

(i) The following shall apply to municipalities administering a Neighborhood Rehabilitation Project:

1. Neighborhood Rehabilitation assistance is limited to one-to-four unit, owner-occupied structures; and

2. No Balanced Housing assistance shall be provided to occupied housing units unless the occupants have been certified as low or moderate income.

(j) In cases where a two-to-four unit structure is rehabilitated with Balanced Housing funds, and one or more of the units is not assisted with Balanced Housing or required matching funds, a percentage of the cost of common area and system wide improvements equal to the percentage of unassisted units shall be paid by the owner. If the structure is owner-occupied and the owner can demonstrate extreme financial hardship, the Department may modify or waive this requirement.

(k) The maximum Balanced Housing Program assistance to any one unit shall not exceed the following:

1. For owner-occupied units, $18,000; or

2. For renter occupied units, the lesser of $10,000 or 75 percent of the rehabilitation cost; provided that, if an owner can demonstrate extreme financial hardship, the Department may waive or modify the requirement to match funds for rental units.

(l) The local construction official or licensed housing inspector must certify that each unit to be rehabilitated with Balanced Housing funds is substandard, that is, that health and safety code violations exist, and that abating those code violations requires that one or more of the following major systems be replaced or extensively repaired: roof, electrical, plumbing, sanitary plumbing, heating or load bearing structural systems.

(m) Any structure repaired in whole or in part with Balanced Housing funds must, upon completion, be certified by the local construction official or other public official having jurisdiction to be free of code violations in accordance with the HUD Section 8 Housing Quality Standards or any applicable State or local housing code that is more stringent.

(n) Balanced Housing funds may be used only for work and repairs required to make a unit standard and any other work or repairs (including finishing and painting) that is directly related to the required activities. Improvements that are strictly cosmetic, and the purchase of free-standing appliances (including refrigerators, but not including stoves), with Balanced Housing funds are prohibited.

5:14-3.11 Landlord Projects

(a) Landlord Projects shall be those projects in which a municipality is funded for the purpose of assisting one or more landlords in the moderate rehabilitation of their units affordable to low and moderate income households.

(b) The maximum Balanced Housing grant to a municipality for a Landlord Project provided on behalf of a for-profit landlord shall be $7,500 multiplied by the number of units to be rehabilitated, not to exceed a total of $250,000, except as specified in (e) below. The for-profit landlord shall match Balanced Housing dollars on a one to one basis.

(c) The maximum Balanced Housing grant to a municipality for a Landlord Project provided on behalf of a not-for-profit landlord shall be $10,000 multiplied by the number of units to be rehabilitated, not to exceed a total of $300,000, except as specified in (e) below.

(d) Housing Authorities may qualify as not-for-profit owners, but must demonstrate that they are in good standing with HUD and that insufficient Comprehensive Improvement Assistance Program (C.I.A.P.) funding is available to complete the project.

(e) In cases where a landlord is rehabilitating a single building and rehabilitation on a smaller scale is not practical, the maximum grant may be exceeded to equal the sum of the per unit subsidies.

(f) All units to be rehabilitated must be identified prior to a funding commitment from the Department.

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(g) The following shall apply to all Balanced Housing Landlord Project grant agreements:

1. The owner must agree to maintain the units in standard condition for the life of the affordability controls. Units with violations must be repaired at the owner's expense;

2. The municipality must agree to recertify the units as standard at regular intervals of two years or less; and

3. For units in municipalities not listed in Appendix A to this chapter, the length of the controls shall be no less than 20 years or until such time thereafter that the units become vacant.

(h) In cases where a structure is rehabilitated with Balanced Housing funds and one or more of the units is not affordable, the cost of common area and systemwide improvements to be paid by the owner shall be proportionate to the number of units that are not Balanced Housing units as compared to the total number of units.

(i) The local construction official or licensed housing inspector must certify that each unit to be rehabilitated with Balanced Housing funds is substandard, that is, health and safety code violations exist, and that abating those code violations requires that one or more of the following major systems must be replaced or extensively repaired: roof, electrical, plumbing, sanitary plumbing, heating or load bearing structural systems.

(j) Any structure repaired in whole or in part with Balanced Housing funds must, upon completion, be certified by the local construction official or other public official having jurisdiction to be free of code violations in accordance with the HUD Section 8 Housing Quality Standards or any applicable State or local housing code that is more stringent.

(k) Balanced Housing funds may be used only for work and repairs required to make a unit standard and any other work or repairs (including finishing and painting) that is directly related to the required activities. Luxury improvements, improvements that are strictly cosmetic, and the purchase of free-standing appliances (including refrigerators, but not including stoves), with Balanced Housing funds are prohibited.

5:14-3.12 Discretionary and Demonstration Projects

(a) In addition to previously listed types of Balanced Housing projects, the Department may fund projects that do not fit into any of these formats. Such projects may include, but shall not be limited to, those that are unique in terms of development, ownership, occupancy characteristics and/or those in which Balanced Housing funds are used to secure additional public financing that would be otherwise lost to the State of New Jersey.

(b) In such projects, the form and amount of Balanced Housing assistance shall be at the discretion of the Department.

SUBCHAPTER 3A. TERMS OF FUNDING AGREEMENT WITH THE DEPARTMENT

5:14A-3A.1 Audit requirements

(a) Any audit required under the grant agreement between the Department and the municipality shall be conducted on an organization-wide basis and for the grantee's fiscal year.

(b) All audits must meet the audit requirements as delineated in the grant agreement.

(c) Audits shall be performed by a registered municipal auditor retained by the grantee, certified public accountant retained by the Grantee or independent auditor appointed by the Department.

(d) The cost of any required single audit shall not be provided for under the agreement, but shall be at the expense of the grantee.

5:14-3A.2 Program specifications; revisions

(a) Changes or revisions to the program specifications shall require the written approval of the Division Director and shall be subject to the following conditions:

1. The grantee shall have made all reasonable attempts to implement the original activities to be changed or deleted and it is unlikely that continued efforts to implement the original activities will result in their timely completion;

2. The added or changed activities are likely to result in program benefits comparable to those originally proposed; and

3. The changed or added activities can be completed in a timely manner.

5:14-3A.3 Method of payment

(a) Prior to the release of funds provided for under the agreement, the grantee shall prepare and submit the following documents:

1. A New Jersey State Invoice (AR 50/54) requesting payment; and

2. Fiscal and programmatic reports, drawdown schedule, certification regarding amount and quality of work completed, and any other information required by the assigned Department program manager.

(b) Any payment request shall not exceed the required amount of fidelity bond insurance coverage.

(c) The required fiscal and programmatic reports shall be current.

5:14-3A.4 Third party contracts

(a) Any contract with a separate entity to serve as the sponsor/developer for the project or for professional/consultant services paid for in whole or in part with the funds provided for under the agreement must be reviewed and approved by the Department.

5:14-3A.5 Financial and performance reporting

(a) Interim expenditure reports and performance reports shall be submitted on a quarterly basis. These reports, certified by the project coordinator and chief financial officer, shall be submitted, in a format provided by the Department, in accordance with the following schedule:

Date Due	Report Period
April 10	January—March
July 10	April—June
October 10	July—September
January 10	October—December

(b) The Department may, at its option, require more frequent reporting.

(c) A final report, in a format provided by the Department, shall be submitted by the grantee no later than 60 days after the ending date of the agreement.

(d) Should the Department wish to issue a report concerning the program, its results, the techniques involved, and the conclusions reached, the grantee shall cooperate fully by making available to the Department for publication or other use such information as the Department may request.

5:14-34.6 Program income

The use of program income, if any, as defined in the grant agreement, and any interest earned on Department payments, shall be determined by the Department.

5:14-3A.7 Bonding and insurance

Proof of fidelity bonding for at least the period of the agreement shall be provided. Further, the grantee shall agree to procure and maintain any other insurance coverage that may be required by the Department.

5:14-3A.8 Unexpended Fund Balances

Funds obligated but not disbursed at the end of the agreement period shall be liquidated within 60 days after the ending date of the agreement.

5:14-3A.9 Financial management monitoring system

(a) For Neighborhood Rehabilitation Projects, the grantee shall submit to the Department a financial-related audit on the grant and required matching funds, specifically, a Balance Sheet and Statement of Revenue, Expenditures and Changes in Fund Balance—Variances between Budget and Actual.

1. The financial-related audit is to be performed by a Certified Public Accountant, as directed by the Department, and shall include, but not be limited to, the following:

i. A statement in the auditor's report that the audit was made in accordance with generally accepted government auditing standards;

ii. A written report on the auditor's test of compliance with applicable laws and regulations and this chapter; and

iii. A written report on the auditor's understanding of the entity's internal control structure and the assessment of control risks.

(b) For all other project types, there shall be a project specific cost certification performed by an entity approved by the Department prior to final disbursement of funds.

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5:14-3A.10 Certification of compliance

(a) The grantee shall assure and certify that the project activities, goals and timetables are in compliance with all applicable Federal and State laws and regulations as they relate to the acceptance and use of funds for this program. The grantee's assurances must include, without limitation, the following:

i. That it possesses legal authority to accept the grant, as evidenced by a resolution, motion or similar action that has been duly adopted as an official act by the governing body authorizing the acceptance of the agreement, including all attachments contained therein;

2. That it shall provide and maintain competent and adequate staff supervision and inspection at the construction site, where applicable, to ensure that the completed work conforms with the approved plans and specifications and it shall furnish progress reports and such other information as the Department may require; and

3. That it shall establish safeguards to prohibit local officials and employees from using their positions for a purpose that is, or gives the appearance of being, motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties. Any such occurrences must be disclosed to the Department in writing for remedial action.

5:14-3A.11 Nondiscrimination

(a) A Statement of Nondiscrimination shall be signed by predominantly religious organizations and entities receiving funds provided for under the agreement in support of affordable housing. The Statement of Nondiscrimination must contain the name and title of the person signing the Statement, the name of the organization and the date. The organization must state that:

1. It shall not discriminate against any applicant for housing on the basis of religion and shall not limit occupancy, or give preference in occupancy, to persons on the basis of religion;

2. It will not discriminate against any employee on the basis of religion and will not limit employment or give preference to persons on the basis of religion;

3. It will provide no religious instruction or counselling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in connection with the provision of housing or services assisted in any way under this agreement; and

4. The portion of the structures developed with funds provided in whole or in part under the agreement shall contain no sectarian or religious symbols or decorations.

(b) This section shall not be construed as limiting any individual occupant in the free practice of religion.

5:14-4.5 Owner-occupied Neighborhood Rehabilitation Projects

(a) Owner-occupied units in Neighborhood Rehabilitation Projects shall be restricted by a deferred loan agreement that is secured by a note and mortgage from the property owner to the Department of Community Affairs. The mortgage shall be subordinate to a senior mortgage and additional liens as identified at the time of the signing of the mortgage. An income-eligible owner-occupant who is the recipient of a deferred payment loan for rehabilitation of a substandard unit shall be subject to the following restrictions:

1.-4. (No change.)

5. The Department shall not subordinate its lien to any subsequent mortgage. This requirement may be waived by the Department under the following circumstances:

i. The proceeds of the new loan are required to make major repairs of the property that were not addressed in the original rehabilitation project or to address items which have become substandard subsequent to the rehabilitation;

ii. The proceeds of the new loan are required for the payment of medical expenses;

iii. The proceeds of the new loan are required for educational expenses; and/or

iv. The overall debt remains essentially unchanged but the mortgage has been refinanced in order to obtain more favorable terms.

6. Requests for waivers should be addressed to the Division Director no less than 45 days in advance of the loan closing. The written decision of the Director shall be final.

5:14-4.10 Length of restrictions

(a) The municipality shall provide contractual guarantees and procedures that will ensure that all units funded with Balanced Housing funds for low and moderate income households, with the exception of Neighborhood Rehabilitation 1-4 unit projects, shall remain affordable to such households from the date the initial restrictions encumber the unit until such time as stated below.

1. Sales units located in those municipalities listed in [the Appendix to this chapter] **Appendix A,** incorporated herein by reference, shall remain affordable to low and moderate income households for at least 10 years. At the first non-exempt sales transaction after the restricted period, the owner shall be entitled to the maximum allowable resale price as calculated by the index and five percent of the price differential. The balance of the price differential shall be returned to the Balanced Housing Fund for additional housing development purposes.

2. Sales units located in municipalities not listed in [the] Appendix **A** shall remain affordable to low and moderate income households for at least 20 years. At the first non-exempt sales transaction after the restricted period, the owner shall be entitled to the maximum allowable resale price as calculated by the Index and five percent of the price differential. The balance of the price differential shall be returned to the Balanced Housing Fund for additional housing development purposes.

3. At least 10 years for rental units located in municipalities listed in [the] Appendix **A**.

4. At least 20 years for rental units located in municipalities not listed in [the] Appendix **A**.

(b)-(c) (No change.)

APPENDIX A

[Sales and rental units funded in municipalities listed below shall be subject to at least 10 year affordability controls. Sales and rental units funded in municipalities not listed below shall be subject to at least 20 year affordability controls.]

Atlantic: None
Bergen: [Lodi, Garfield] **None**
Burlington: Pemberton [Tp.] **Township**
Camden: Camden
Cape May: None
Cumberland: Vineland, Bridgeton
Essex: Belleville, Bloomfield, East Orange, Irvington, Montclair, Newark, Orange
Gloucester: Deptford
Hudson: Bayonne, Hoboken, Jersey City, North Bergen, Union City, Weehawken, West New York
Hunterdon: None
Mercer: Trenton
Middlesex: Carteret, New Brunswick, Perth Amboy
Monmouth: Asbury Park, Keansburg, Long Branch, Neptune
Morris: None
Ocean: Lakewood
Passaic: Passaic, Paterson
Salem: None
Somerset: None
Sussex: None
Union: Elizabeth, Hillside, Plainfield, Roselle **Park**
Warren: [None] **Phillipsburg**

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APPENDIX B

Maximum Subsidy Homeownership Units

Sales Price (1000's)	Studio/1BR	2BR	3BR	4BR
80	0	0	0	5,000
77.5	0	0	250	6,250
75	0	0	1,500	7,500
72.5	0	0	2,750	8,750
70	0	0	4,000	10,000
67.5	0	0	5,250	11,250
65	0	0	6,500	12,500
62.5	0	1,250	7,750	13,750
60	0	2,500	9,000	15,000
57.5	0	3,750	10,250	16,250
55	0	5,000	11,500	17,500
52.5	0	6,250	12,750	8,750
50	625	7,500	14,000	21,250
47.5	1,875	8,750	15,250	23,750
45	3,125	10,000	17,750	26,250
42.5	4,375	12,500	20,250	27,500
40	5,625	15,000	22,750	27,500
37.5	6,875	17,500	25,000	27,500
35	8,125	20,000	25,000	27,500
32.5	10,375	22,500	25,000	27,500
30	12,875	22,500	25,000	27,500
27.5	15,375	22,500	25,000	27,500
25	17,875	22,500	25,000	27,500
22.5 or less	20,000	22,500	25,000	27,500

ADJUSTMENTS:

1. Unit Size:

The Balanced Housing funding charts are based on certain assumptions regarding minimum unit size. These assumptions are:

Studio—600 square feet (Sq. Ft.)

1 Bedroom	750 Sq. Ft.
2 Bedrooms	850 Sq. Ft.
3 Bedrooms	1000 Sq. Ft.
4 Bedrooms	1150 Sq. Ft.

For units of smaller square footage, deduct from the maximum subsidy $50.00 for each square foot below the minimum.

2. Purchaser Profile:

The amount of Balanced Housing funds reserved for a project shall be based on the information provided in the application. If, during occupancy, there is a need to alter the purchase price based on the actual purchase profile, the Department may, at its discretion and subject to the availability of funds, adjust the subsidy as follows:

If the price is lowered in order to accommodate a household at the targeted range of affordability which does not meet the standard occupancy assumptions (for example, a three person household that requires a three bedroom unit), add one dollar in subsidy for each dollar that the purchase price is reduced.

For adjustments made in the price of a unit based on an altered range of affordability, the adjusted subsidy shall be calculated off the funding chart.

The total additional subsidy shall not exceed $15,000 per unit.

3. Location: For units located in municipalities listed on Appendix A, add 20 percent to the maximum subsidy.

APPENDIX C

Maximum Subsidy Rental Units

Monthly Rent	SRO	Studio/1BR	2BR	3BR	4BR
900	0	0	0	250	5,000
875	0	0	0	1,500	6,250
850	0	0	0	2,750	7,500
825	0	0	0	4,000	8,750
800	0	0	0	5,250	10,000
775	0	0	0	6,500	11,250
750	0	0	0	7,750	12,500
725	0	0	0	9,000	13,750
700	0	0	1,250	10,250	15,000
675	0	0	2,500	11,500	16,250
650	0	0	3,750	12,750	17,500
625	0	0	5,000	14,000	18,750
600	5,000	500	6,250	15,250	20,000
575	7,500	1,750	8,750	16,500	22,500
550	10,000	3,000	10,000	19,000	25,000
525	12,500	4,250	11,250	21,500	27,500
500	15,000	5,500	12,500	24,000	30,000
475	15,000	6,750	15,000	26,500	32,500
450	15,000	8,000	17,500	29,000	32,500
425	15,000	10,250	20,000	30,000	32,500
400	15,000	13,000	22,500	30,000	32,500
375	15,000	15,250	25,000	30,000	32,500
350	15,000	18,000	27,500	30,000	32,500
325	15,000	20,500	27,500	30,000	32,500
300	15,000	23,000	27,500	30,000	32,500
275	15,000	24,250	27,500	30,000	32,500
250 or less	15,000	25,000	27,500	30,000	32,500

ADJUSTMENTS:

1. Unit Size:

The Balanced Housing funding charts are based on certain assumptions regarding minimum unit size. These assumptions are:

Studio—600 square feet (Sq. Ft.)

1 Bedroom	750 Sq. Ft.
2 Bedrooms	850 Sq. Ft.
3 Bedrooms	1000 Sq. Ft.
4 Bedrooms	1150 Sq. Ft.

For units of smaller square footage, deduct from the maximum subsidy $50.00 for each square foot below the minimum.

2. Renter Profile:

The amount of Balanced Housing funds reserved for a project shall be based on the information provided in the application. If during occupancy there is a need to alter the rent based on the actual renter profile, the Department may, at its discretion and subject to the availability of funds, adjust the subsidy as follows:

If an adjustment in the rent is made in order to accommodate a household at the targeted range of affordability which does not meet the standard occupancy assumptions (for example, a three person household that requires a three bedroom unit) add $10.00 for each one dollar reduction in rent.

For adjustments made in the rent of a unit based on an altered range of affordability, the adjusted subsidy shall be calculated off the funding chart.

The total additional subsidy shall not exceed $15,000 per unit.

3. Location: For units located in municipalities listed on Appendix A, add 20 percent to the maximum subsidy.

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APPENDIX D

Contractor's Fee Schedule
(Interpolate as Required)

Fee Schedule: The Contractor's fee shall be based on a percentage of the construction cost in accordance with the following schedule:

Construction Cost	Percentage	Contractor's Fee
Under $2 Million	10.0	—
$ 2,000,000.00	10.0	$ 200,000.00
3,000,000.00	9.5	285,000.00
4,000,000.00	9.0	360,000.00
5,000,000.00	8.5	425,000.00
6,000,000.00	8.2	492,000.00
7,000,000.00	7.9	553,000.00
8,000,000.00	7.6	608,000.00
9,000,000.00	7.3	657,000.00
10,000,000.00	7.0	700,000.00
11,000,000.00	6.7	737,000.00
12,000,000.00	6.6	792,000.00
13,000,000.00	6.5	845,000.00
14,000,000.00	6.4	896,000.00
15,000,000.00	6.3	945,000.00
16,000,000.00	6.2	992,000.00
17,000,000.00	6.1	1,037,000.00
18,000,000.00	6.0	1,080,000.00
19,000,000.00	5.9	1,121,000.00
20,000,000.00	5.8	1,160,000.00
21,000,000.00	5.7	1,197,000.00
22,000,000.00	5.6	1,232,000.00
23,000,000.00	5.5	1,265,000.00
24,000,000.00	5.4	1,296,000.00
25,000,000.00	5.3	1,325,000.00
26,000,000.00	5.2	1,352,000.00
28,000,000.00	5.0	1,400,000.00
30,000,000.00	4.8	1,440,000.00
32,000,000.00	4.6	1,472,000.00
34,000,000.00	4.4	1,496,000.00
36,000,000.00	4.2	1,512,000.00
38,000,000.00	4.0	1,520,000.00
Over $38 Million	4.0	—

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Public School Facilities

Proposed Amendments: N.J.A.C. 5:23-3.11A and 4.2

Authorized By: Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 52:27D-130.
Proposal Number: PRN 1991-179.

Submit comments by May 15, 1991 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625

The agency proposal follows:

Summary

P.L. 1990, c.23, which allows school boards to submit plans to their choice of construction official for plan review in exchange for a fee, was signed into law on March 1, 1990. However, rule changes made in response to that statutory change were not reflective of changes in plan review procedures that remained effective pursuant to a memorandum of understanding (MOU) entered into March 21, 1984 between the Department of Community Affairs and the Department of Education concerning procedures to be followed for educational adequacy and plan review of proposed school facilities, following P.L. 1983, c.496. Both of these laws amended N.J.S.A. 52:27D-130.

Though both departments have understood and followed the terms of the statutory changes and their MOU, Department of Community Affairs' rules, particularly N.J.A.C. 5:23-3.11A and 4.2, have not reflected the changes. The amendments proposed here, which have been reviewed by the Department of Education, conform the rules both to the terms of the recent statutory changes and to the MOU.

Additional amendments have been made to N.J.A.C. 5:23-3.11A(e) to update references to the BOCA National Building Code.

Social Impact

The impact of the proposed amendments should be minimal since the procedures it reflects are currently in effect and have been implemented by the two departments. The proposed amendments will clarify these procedures.

Economic Impact

Inasmuch as the proposed amendments do not change existing procedures, they have no foreseeable or calculable economic impact.

Regulatory Flexibility Statement

The proposed amendments do not change existing procedures and their only effect is on public schools. Consequently, they will have no impact on "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

5:23-3.11A Enforcement activities reserved to other State agencies

(a)-(b) (No change.)

(c) The Department of Education shall [be the sole enforcing agency, except as provided in N.J.S.A. 52:27D-130 and (d) below for the following structures:

1. Public schools;
2. Private schools for the handicapped; and
3. Schools for the handicapped operated by the Department of Human Services] **ensure that the following types of projects comply with the Department of Education, Bureau of Facility Planning Services' rules at N.J.A.C. 6:22 and that the projects meet the standards for educational adequacy therein:**

1. New school buildings;
2. Additions to existing school buildings;
3. Alterations changing the total number of units, size or type of any instructional space;
4. Alterations changing office space that require alterations to instructional space;
5. Alterations to locker, weight or game rooms, or to field houses with locker facilities;
6. Alteration of athletic fields or tracks and field areas;
7. Installations of mobile units; or
8. Any site or building change or alteration for the purpose of making the site and school barrier-free pursuant to N.J.A.C. 5:23-7 and accessible to the handicapped pursuant to section 504 of the Federal Rehabilitation Act of 1973.

(d) (No change.)

(e) The State Department of Education, or the municipal code enforcing agency providing construction code plan approval, shall be responsible for enforcing the following Uniform Construction Code enhancements in public school buildings:

1.-4. (No change.)

5. An automatic fire detection system shall be installed in all new buildings of use group E (educational), as designated in the BOCA National Building Code/[81 1017.3.1] **90 Section 1016.4.1** and in accordance with applicable National Fire Protection Association standards. The system shall utilize:

i.-iv. (No change.)

6. Manual fire alarm boxes, in addition to BOCA/[87 1017.2] **90 Section 1016.3** requirements as amended, shall be provided in the natural path of escape from fire, near each exterior door from the corridor, kitchen, heater room and other exterior exits that are required to serve 50 or more persons. Additional fire alarm boxes shall be located in the main office, stage, at each stairway entrance from a corridor or place of assembly and near one exterior exit in each section of a place of assembly. It shall not be necessary to traverse more than 200 feet of unobstructed horizontal distance on the same floor in order to reach a fire alarm box.

7.-8. (No change.)

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5:23-4.2 Matter covered; exceptions

(a) (No change.)

(b) Rules concerning exceptions are:

1. (No change.)

2. Department of Education: [i.] When final plans for the construction or alteration of a public school facility [are] **have been** submitted to the Department of Education, [for] **and** [approval] **approved under the standards for facility adequacy set forth at N.J.A.C. 6:22, and have been submitted for review to, and released by, a licensed State construction official**, such plans shall also be filed with the enforcing agency of the municipality in which the public school is located. The enforcing agency shall have the right to inspect any construction or alteration of a public facility for the purpose of advising the board of education of the school district in which the public school facility is being constructed and the Commissioner of Education of any violations of [the school house guide adopted pursuant to Title 18A of the New Jersey statutes, or practices detrimental to the health and safety of the community] **the standards for facility adequacy set forth at N.J.A.C. 6:22; the educational enhancements set forth at N.J.A.C. 5:23-3.11A(d); or any other provision of the State Uniform Construction Code**. The advice of the enforcing agency shall be binding upon the district board of education, except that an appeal to the Department of Education shall be available to the district board of education.

[ii. When change in the plans for construction or alteration of public school facility are submitted to the enforcing agency of the municipality in which the public school facility is or shall be located.]

(c) (No change.)

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code

Licensing

Proposed Amendments: N.J.A.C. 5:23-5.3, 5.15, 5.20 and 5.23

Authorized By: Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-124.

Proposal Number PRN 1991-191.

Submit comments by May 15, 1991 to:

Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625

The agency proposal follows:

Summary

These proposed amendments to the Department's licensing requirements eliminate the availability of the Fire Inspector RCS License after August 1, 1991. Applications will be accepted only until July 31, 1991. This license was made available at the inception of the Fire Subcode to qualify those people with fire service experience who wanted to begin working in code enforcement. Further work in this area in the future will require a Fire Inspector ICS or HHS license. The courses of study for these have each been expanded by 30 hours (Fire Inspector ICS 90 to 120 hours and Fire Inspector HHS 30 to 60). The Fire ICS license will also require an additional test, Module-4A Mechanical 1 & 2 Family.

After surveying teachers of licensing courses, and changes in required subject matter, the following course hour changes have also been made:

Building Inspector RCS	45 to 60 hours
Building Inspector ICS	60 to 90 hours
Building Inspector HHS	90 to 60 hours
Plumbing Inspector HHS	30 to 60 hours
Electrical Inspector HHS	30 to 45 hours

Additional amendments provide for mid-term and final examinations, specify code books to be used in courses, and detail some of the subject matter to be covered in courses.

Social Impact

The elimination of the fire inspector RCS license will ensure that licensed officials in the future are more highly qualified and better prepared to assess and review modern fire detection and suppression systems. The Department's educational and licensing practices must accommodate recent technological advances in the field. Similarly, changes in course hours, tests required and required texts will ensure that code officials are qualified to perform their duties.

Economic Impact

More extensive courses will require more instructor time, and hence increased tuition payments. Tuition payments are reimbursed out of the Department's training fund.

Regulatory Flexibility Statement

These rules affect persons training to be inspectors and the institutions of higher education that provide training. They do not affect "small businesses," as the term is defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

5:23-5.3 Types of licenses

(a) (No change.)

(b) Rules concerning **classification of** code enforcement officials [classified] are:

1. Technical licenses: Subject to the requirements of this subchapter, persons may apply for, and [shall] **may** be licensed in, the following specialties:

i.-ii. (No change.)

iii. Fire protection inspector: Fire protection inspectors are authorized to carry out field inspection and plan review work pursuant to regulations subject to the limitations specified herein.

(1)-(2) (No change.)

(3) Fire protection inspector with a specialty in residential and small commercial structures (R.C.S.): Fire protection inspectors R.C.S. are authorized to review plans for structures in class III and to carry out field inspection activities for structures in classes I, II and III. **This license will no longer be available after July 31, 1991, and all licenses issued on or before that date shall cease to be valid after July 31, 1993.**

iv.-v. (No change.)

2.-4. (No change.)

5:23-5.15 Fire protection inspector R.C.S. requirements

(a) Issuance of the fire protection inspector RCS license will be discontinued after July 31, 1991. All licenses issued on or before that date shall cease to be valid after July 31, 1993.

[(a)]**(b)** (No change in text.)

[(b)]**(c)** A candidate for a license as a fire protection inspector R.C.S. shall also meet the following requirements prior to application:

1. (No change.)

[2. Successful completion of an examination as required by N.J.A.C. 5:23-5:23.

(c) A provisional license shall be issued to any person who has been appointed to the position of fire protection inspector R.C.S. in a local enforcing agency, provided that such person possesses the required experience and further provided that such person shall have successfully completed the educational program established in N.J.A.C. 5:23-5.21 for fire protection inspector R.C.S. within 12 months of the appointment.]

5:23-5.20 Standards for educational programs

(a) (No change.)

(b) This [section] **subsection** covers the organizational, administrative, and operational functions that support the code enforcement educational programs.

1.-2. (No change.)

3. Admission, retention and evaluation policies and practices:

i. (No change.)

ii. Grading: An institution shall have evaluation procedures, **including a mid-term and final examination,** to assess the quality of its

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students when they complete programs and, at the very least, establish and apply pass/fail criteria.

iii.-iv. (No change.)

4.-6. (No change.)

(c) (No change.)

(d) Each course of study [should] **shall** consist of a planned pattern of instruction and experiences designed to meet the standards specified herein.

1. Building inspector R.C.S.: The following standards apply to programs designed to satisfy the educational program requirements for a license as building inspector R.C.S.:

i. Subject areas: The program shall provide at least [45] **60** contact hours of instruction. It shall ensure technical competencies in the following subject as it applies to class III buildings as established in [subchapter 3 of these regulations] **N.J.A.C. 5:23-3**:

(1) (No change.)

ii. The texts that are used in teaching this course shall include, but not be limited to, the BOCA Basic/National Building Code, the BOCA Basic/National Mechanical Code and the CABO One & Two Family Dwelling Code.

2. Building inspector I.C.S.: The following standards apply to programs designed to satisfy the educational program requirements [in N.J.A.C. 5:23-5.5] for licensure as a building inspector I.C.S.:

i. (No change.)

ii. Subject requirements: The program shall consist of two major subjects as specified below and shall provide at least [30] **45** contact hours of instruction in each subject. It shall ensure technical competencies in the following areas as they apply to class II buildings as established in [subchapter 3 of these regulations] **N.J.A.C. 5:23-3.**

iii. (No change.)

iv. Subject 2, Plan review and field inspection:

(1) Area 1, Uniform Construction Code: Organization and content of Uniform Construction Code regulations, **including the barrier free subcode** and organization and content of **the** building subcode; basic classification of structures into class categories.

(2)-(3) (No change.)

v. The texts used in teaching this course shall include, but not be limited to, the BOCA Basic/National Building Code, the BOCA Basic/National Mechanical Code and the BOCA Basic/National Energy Conservation Code.

3. Building inspector H.H.S.: The following standards apply to programs designed to satisfy the educational requirements [and] for licensure as building inspector H.H.S.:

i. (No change.)

ii. Subject requirements: The program shall consist of three major subjects as specified below and shall provide at least [30] **20** contact hours of instruction in each subject. It shall ensure technical competencies in the following subject areas as they apply to class I and all other structures as established in [subchapter 3 of these regulations] **N.J.A.C. 5:23-3**.

iii. (No change.)

[iv. Subject 2, Advanced fire protection systems: Fire protection systems requirements, standards and design methods for exotic (nonwater) high-rise fire safety systems, including material and installation standards and methods for ensuring compliance with those standards.]

[v.]**iv.** Subject [3] **2**, Advanced mechanical systems: Requirements for and the design principals involved in the various types of [hearing] **heating**, ventilating and air conditioning systems found in class I structures, with particular emphasis on procedures ensuring adequacy of installation, including fire protection requirements for such systems.

vi. The texts used in teaching this course shall include, but not be limited to, the BOCA Basic/National Building Code, the BOCA Basic/National Mechanical Code and the BOCA Basic/National Conservation Code.

4. Electrical inspector I.C.S.: The following standards apply to programs designed to satisfy the educational program requirements for licensure as an electrical inspector I.C.S.:

i.-iii. (No change.)

iv. The texts used in teaching this course shall include, but not be limited to, the National Electrical Code (NEC).

5. Electrical inspector H.H.S.: The following standards apply to programs designed to satisfy the educational program requirements for licensure as an electrical inspector H.H.S.:

i. (No change.)

ii. Subject requirements: The program shall consist of one major subject as specified below and shall provide at least [30] **45** hours of instruction in this subject. It shall ensure technical competencies in the following as it applies and class I and all other structures as established in [subchapter 3 of these regulations] **N.J.A.C. 5:23-3.**

(1) Subject 1, Advanced electrical systems design: The procedures, [and] methods **and calculations** necessary to check the design, material, and installation practices for the more complex systems which characterize class I buildings, with particular attention being paid to the hazardous uses identified in article 4 of the building subcode and the hazardous (classified) locations identified in the electrical subcode.

iii. The texts used in this course shall include, but not be limited to, the National Electrical Code (NEC).

[6. Fire protection inspector R.C.S.: The following standards apply to satisfy the educational requirements for a license as fire protection inspector R.C.S.

i. Subject requirements:

(1) The program shall provide at least 45 contract hours of instruction.

(2) It shall ensure technical competencies in the following areas as they apply to class III buildings as established in subchapter 3 of these regulations.

(3) Subject: Plan review and field inspection for residential and small commercial structures.

(4) Area 1, Uniform Construction Code:

(A) Organization and content of the Uniform Construction Code regulations: organization and content of the fire protection subcode.

(B) Fundamental knowledge of the fire protection subcode's background purpose, history, place in local government structure and relation to construction code enforcement programs at other levels of government.

(C) Basic classification of structures into class categories.

(5) Area 2, Systems design: Systems design and installation practices required by the code and/or its referenced standards for active and passive fire suppression, fire detection and fire alarm systems sufficient to permit the review of plan to determine the adequacy of the systems.

(6) Area 3, Plan review:

(A) Basic fire protection requirements; height and area limitations; fire resistance ratings of structural components; arrangement, sizing and protection of means of egress; flame spread and smoke generated requirements, combustibility of materials; and requirements for installation of fire detection, alarm and suppression systems; chimneys, flues and vents; and heating equipment and appliances.

(B) Instruction in plan reading sufficient to permit an understanding of the process to prepare the students to perform the duties of their position.

(7) Area 4, Materials: Testing methods, agencies and test verification procedures incorporated in the code for combustibility, flame spread and smoke generated requirements and fire resistance ratings.

(8) Area 5, Field inspection:

(A) The use of basic inspection tools and test methods.

(B) The construction process for smaller buildings and the points at which inspection must be made.

(C) Basic inspection report writing including the preparation of violation notices and required inspection recordkeeping.]

[7.]**6.** Fire protection inspector, I.C.S.: The following standards apply to programs designed to satisfy the educational program requirements for licensure as a fire protection inspector I.C.S.:

[i. Prerequisites: Completion of an educational program meeting the requirements for fire protection inspector R.C.S.]

[ii.]**i.** Subject requirements: The program shall consist of [three] **two** major subjects as specified below and shall provide at least [30] **60** contact hours of instruction in each subject. It shall ensure technical competencies in the following subjects as they apply to class II and class III as established in [subchapter 3 of these regulations] **N.J.A.C. 5:23-3**.

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[iii.] **ii.** Subject 1, [Fire protection systems] **Plan review and field inspection:**

(1) Area 1, [Fire protection] **Uniform Construction Code:**

(A) [Height and area limitations; fire resistance ratings of structural components; arrangement, sizing and protection of means of egress; flame spread and smoke generated requirements, combustibility of materials; requirements for installation of fire detection alarm and suppression systems.] **Organization and content of the Uniform Construction Code, N.J.A.C. 5:23; organization and content of the fire protection subcode.**

(B) [Testing methods, agencies and test verification procedures incorporated in the code for combustibility, flame spread, and fire resistance ratings.] **Fundamental knowledge of the fire protection subcode's background purpose, history, place in local government structure and relation to construction code enforcement programs at other levels of government.**

(C) [Systems design and installation practices required by the code and/or its referenced standards for active and passive fire suppression, fire detection and fire alarm systems sufficient to permit the adequacy of systems designed to be checked through plan reviews.] **Basic classification of structures into class categories.**

(2) Area 2, [Electrical installations:

(A) An understanding of the materials requirements found in the electrical code, including the ability to recognize approved material and an understanding of the standards and test methods which lead to such approval.

(B) An understanding of the proper installation methods of all approved materials leading to an ability to ensure that all materials are installed in accordance with proper methods.] **Systems design: Systems design and installation practices required by the Uniform Construction Code and/or its referenced standards for active and passive fire suppression; understanding of fire detection and fire alarm systems sufficient to permit the review of plans to determine the adequacy of the systems.**

(3) Area 3, Plan Review:

(A) Basic fire protection requirements; height and area limitations; fire resistance ratings of structural components; arrangement, sizing and protection of means of egress; flame spread and smoke generated requirements; combustibility of materials; and requirements for installation of fire detection; alarm and suppression systems; chimneys, flues and vents; and heating equipment and appliances.

(B) Methods of systematic plans analysis: The information pertaining to structural, architectural, mechanical, fire protection and electrical features of a building that must be shown on the plans to ensure compliance with the requirements of the Uniform Construction Code.

(C) Analysis methods needed to ensure that fire protection elements of buildings depicted on plans do in fact conform to code requirements.

(4) Area 4, Materials: Testing methods, agencies and test verification procedures incorporated in the code for combustibility, flame spread, and smoke generation requirements and fire resistance ratings.

[iv.]**iii.** Subject 2, [Fire prevention: The relationship of fire prevention codes which regulate the use and occupancy of buildings and fire protection codes which regulate their construction; the fire prevention code provisions, enforcement procedures and objectives including the protection of places of assembly; the fire prevention code regulatory process which will ensure an understanding of the manner in which those fire hazards not regulated by the construction code can be regulated in the interest of pubic safety and fire protection generally.] **Fire protection systems:**

(1) Area 1, Fire protection:

(A) Systems design and installation practices required by the code and/or its referenced standards for active and passive fire suppression; fire detection and fire alarm systems sufficient to permit the adequacy of systems designed to be checked through plan reviews and field inspections.

(2) Area 2, Electrical installations:

(A) An understanding of the material requirements found in the electrical code, including the ability to recognize approved material and an understanding of the standards and test methods which lead to such approval.

(B) An understanding of the proper installation methods of all approved materials, leading to an ability to ensure that all materials are installed in accordance with proper methods.

(3) Area 3, Fire prevention:

(A) The relationship of fire prevention codes that regulate the use and occupancy of buildings and fire protection codes that regulate their construction; the fire prevention code provisions; enforcement procedures and objectives including the protection of places of assembly; the fire prevention code and its enforcement that will ensure an understanding of the manner in which those fire hazards not regulated by the construction code can be regulated in the interest of public safety and fire protection generally.

(4) Area 4, Field inspection:

(A) The use of basic inspection tools and test methods.

(B) The construction process and the points at which inspections must be made.

(C) Field inspection and controlled inspection techniques necessary to ensure that the materials installed at the construction site are of the same strength and quality as assumed by the design calculations and that they are installed in the manner required to achieve and preserve that strength.

(D) Basic inspection report writing, including the preparation of violation notices and required inspection record keeping.

[v. Subject 3, Plan review and field inspection:

(1) Area 1, Uniform Construction Code:

(A) Organization and content of the Uniform Construction Code regulations.

(B) Organization and content of the fire protection subcode.

(C) Basic classification of structures into class categories.

(D) Fundamental knowledge of the fire protection subcode's background, purpose history, place in local govenment structure and relation to construction code enforcement programs at other levels of government.

(2) Area 2, Plan review:

(A) Methods of systematic plans analysis: The information pertaining to structural, architectural, mechanical, fire protection and electrical features of building which must be shown on the plans to ensure compliance with the requirements of the code.

(B) Analysis methods needed to ensure that fire protection elements of buildings depicted on plans do in fact conform to code requirements.

(3) Area 3, Field inspection:

(A) Field inspection and controlled inspection techniques necessary to ensure that the materials installed at the construction site are of the same strength and quality as assumed by the design calculations and that they are installed in the manner required to achieve and preserve that strength.

(B) Basic inspection report writing including the preparation of violation notices and required inspection record keeping.]

iv. The texts used in teaching this course shall include, but are not limited to, the following: BOCA Basic/National Building Code, BOCA Basic/National Mechanical Code, CABO One & Two Family Dwelling Code, National Electrical Code (NEC) and the National Standard Plumbing Code.

[8.]**7.** Fire protection inspector H.H.S.: The following standards apply to programs designed to satisfy the educational program requirements for a license as a fire inspector H.H.S.:

i. (No change.)

ii. Subject requirements: The program shall consist of one major subject as specified below and shall provide at least [30] **60** contact hours of instruction. It shall ensure technical competencies in the following areas as they apply to class I and all other structures as established in [subchapter 3 of these regulations] **N.J.A.C. 5:23-3.**

iii. (No change.)

iv. The texts used in teaching this course shall include, but not be limited to, the BOCA Basic/National Building Code, the BOCA Basic/National Mechanical Code, the National Electrical Code (NEC) and the National Standard Plumbing Code.

[9.]**8.** Plumbing inspector I.C.S.: The following standards apply to programs designed to satisfy the educational program requirements for a license as a plumbing inspector I.C.S.:

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i. (No change.)
ii. Subject 1, System design:
(1)-(3) (No change.)
[(4) Methods of construction, location and operation of on-site sewage disposal systems, small sewage disposal plants and private water supply systems.]
iii. Subject 2, Plan review and inspection methods and procedures:
(1) Area 1, Uniform Construction Code:
(A)-(C) (No change.)
(D) [Basic classification of structures into class types] **Organization and content of the Barrier Free Subcode;**
(E) [Fundamental knowledge of the plumbing subcode's background, purpose, history, place in local government structure and relation to code enforcement programs at other levels of government.] **Basic classification of structures into class types;**
(F) Fundamental knowledge of the plumbing subcode's background, purpose, history, place in local government structure and relation to code enforcement programs at other levels of government.
iv. (No change.)
v. Area 3, Public health requirements:
(1) Knowledge of New Jersey Health Law and Code, **including prior approval requirements.**
vi. The texts used in teaching this course shall include, but not be limited to, the National Standard Plumbing Code, the BOCA Basic/National Mechanical Code, the BOCA Basis/National Energy Conservation Code and the CABO One & Two Family Dwelling Code.
[10.]**9.** Plumbing inspector H.H.S.: The following standards apply to programs designed to satisfy the educational program requirements for licensure as **a** plumbing inspector H.H.S.:
i. (No change.)
ii. Subject requirements: The program shall consist of [one] **two** major subjects as specified below and shall provide at least[30] **60** hours of instruction in [this] **these** subjects. It shall ensure technical competencies in the following as it applies to class I and all other structures as established in [subchapter 3 of these regulations.] **N.J.A.C. 5:23-3:**
(1) Subject **1**, Advanced plumbing system design: Plumbing system design component [which] **that** will ensure the technical competence necessary to check the systems design and installation for the large and complex systems [which] **that** characterize class I buildings, including pumps, pressure tanks and other such plumbing installation required.
(2) Subject 2, Advanced mechanical systems: Requirements for, and the design principals involved in, the various types of heating, ventilating and air conditioning systems found in class 1 structures.
iii. The texts used in teaching this course shall include, but not be limited to, the National Standard Plumbing Code, the BOCA Basic/National Mechanical Code, and the BOCA Basic/National Energy Conservation Code.
Recodify existing 11.-14. as **10.-13.** (No change in text.)

5:23-5.23 Examination requirements
(a) Examinations shall be held, at least twice annually, to establish eligibility for the following license specialties: building inspector R.C.S., building inspector I.C.S., building inspector H.H.S., electrical inspector I.C.S., electrical inspector H.H.S., fire protection inspector I.C.S., fire protection inspector H.H.S., [facility fire protection supervisor,] plumbing inspector I.C.S., plumbing inspector H.H.S., elevator inspector and inplant inspector.
1. In instances where more than one license level within a given subcode area requires the successful completion of one or more examination modules, award of the higher level license specialty will be dependent upon successful completion of the educational program in accordance with N.J.A.C. [5:23-5.21] **5:23-5.20** and the examination module(s) required for the lower level license, or possession of the applicable lower level license.
2. Applicants for licenses listed above shall demonstrate competence by successful completion of the relevant examination modules of the National Certification Program for Construction Code Inspector administered by the Educational Testing Service for the Department.
(b) Requirements for specific licenses are as follows:
1.-5. (No change.)
6. Examination requirements for fire protection inspector I.C.S.:
i. Successful completion of examination [module] **modules** 3B-Fire Protection General **and 4A-Mechanical 1 and 2 Family.**
7. (No change.)
[8. Examination requirements for facility fire protection supervisor:
i. Successful completion of examination module 3B-Fire Protection General.]
Recodify existing 9.-12. as **8.-11.** (No change in text.)
Recodify existing (b)-(e) as **(c)-(f)** (No change in text.)

(a)

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

Procedural Rules
Petitions for Substantive Certification
Municipal/Developer Incentives
Proposed Amendment: N.J.A.C. 5:91-4.1
Proposed New Rule: N.J.A.C. 5:91-4.5

Authorized By: New Jersey Council on Affordable Housing, Charles Griffiths, Chairman.
Authority: N.J.S.A. 52:27D-301 et seq., specifically 52:27D-307.
Proposal Number: PRN 1991-194.

Submit comments by May 15, 1991 to:
Douglas V. Opalski, Executive Director
N.J. Council on Affordable Housing
CN 813
Trenton, NJ 08625-0813

The agency proposal follows:

Summary

The Fair Housing Act, N.J.S.A. 52:27D-301 et seq., was amended November 30, 1990 to allow a municipality that has filed a housing element of a master plan to petition for substantive certification within two years of filing a housing element. Municipalities that filed housing elements prior to the 1990 amendatory act (P.L. 1990, c.121) are permitted to petition for substantive certification either within two years of filing a housing element or within one year of November 1990, whichever shall result in permitting the municipality the longer period of time within which to petition.

The Council believes that it would be consistent with the intent of the amendatory act and consistent with the goal of encouraging communities to affirmatively address their constitutional housing obligations to offer stronger assurances to municipalities that petition for substantive certification in a timely manner, and offer stronger assurances to parties interested in producing affordable housing when a municipality does not petition for certification in a timely manner.

Thus, when a municipality petitions for substantive certification or is sued for exclusionary zoning within the time limits provided by the amendatory act, stronger assurances will be provided that the Council will not award relief to developers that object to municipal plans. Although there may be situations, such as the lack of alternative sites, where the Council will be required to award a developer relief, the intent of the proposed new rule is to provide greater assurances to municipalities that petition for certification in a timely manner. The proposed new rule also places the burden of proof on objectors to municipal housing elements when contested issues are transferred to the Office of Administrative Law. In light of the amendatory act, N.J.A.C. 5:91-4.1(b) is proposed for deletion.

When a municipality files a housing element, but does not petition within the time limits imposed by the amendatory act and is subsequently sued for exclusionary zoning, the proposed new rule offers developers that initiate exclusionary zoning suits the presumption of relief, provided they build low and moderate income housing.

The proposed new rule also allows municipalities that wish to amend their filed housing elements and fair share plans prior to petitioning for substantive certification or the initiation of an exclusionary lawsuit, the ability to do so. However, the amendment of a plan shall not extend the time period within which a community may petition for certification and receive the considerations outlined in the rule.

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The Council believes these "bright line tests," structured around the time limits imposed by the amendatory act, will result in the production of more low and moderate income housing. It believes that municipalities will be given a stronger incentive to petition for substantive certification. It also believes that parties interested in building low and moderate income housing will have a greater incentive to participate in the Council's administration process if a municipality does not petition within the time frame established by the amendatory act.

Social Impact

The proposed new rule will have a positive impact for the same reasons articulated in the Economic Impact statement. The rule also will have a positive impact in that it provides incentives to municipalities and other parties to address the goals articulated in the New Jersey Supreme Court's Mount Laurel Decisions and the Fair Housing Act.

Economic Impact

The proposed new rule should have a positive economic impact because it encourages municipalities to plan for the production of low and moderate income housing. This is a benefit to parties involved with the production of affordable housing, low and moderate households, middle income households who often find affordable housing within inclusionary developments and to employers seeking to attract a labor force.

Regulatory Flexibility Statement

While the proposed amendment and new rule affects developers, some of which may be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as well as municipalities, it does not impose reporting, recordkeeping or other compliance requirements on such small businesses. The amendment deletes the provision allowing a municipality six years to file for substantive certification. The new rule sets forth the Council's considerations, in various circumstances, for possibly awarding relief to developers objecting to municipal plans or initiating exclusionary zoning litigation. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

5:91-4.1 Petition

(a) (No change.)

[(b) A municipality may, at any time within six years after it has filed a housing element and fair share plan with the Council, petition for substantive certification.]

[(c)](**b**) (No change in text.)

5:91-4.5 Municipal/developer incentives

(a) When a municipality files a housing element and petitions for substantive certification or is sued for exclusionary zoning within two years of filing a housing element, the Council shall not award relief to a developer except in extraordinary situations. Extraordinary situations include, but are not limited to, the lack of suitable alternative sites in the municipality to produce the required low and moderate income housing. If contested issues are transferred to the Office of Administrative Law pursuant to N.J.A.C. 5:91-8, the burden of proof shall be on the objectors to the municipal housing element, unless the Council has made a determination that an extraordinary situation exists.

(b) When a municipality has filed a housing element prior to November 30, 1989, a peititon for substantive certification or an exclusionary zoning lawsuit filed prior to November 30, 1991 shall result in the considerations outlined in (a) above.

(c) If a developer files an exclusionary zoning lawsuit against a municipality prior to a municipal petition for substantive certification, the Council shall presumptively require the municipality to include the developer's site as a component of its plan if:

1. The developer offers a site that is suitable pursuant to N.J.A.C. 5:92-9; and

2. The municipality has filed a housing element but has not petitioned in a timely manner as defined in (a) and (b) above.

(d) The Council shall consider awarding relief to developers that object to a municipal plan when:

1. The municipality has filed a housing element and petitions for substantive certification prior to an exclusionary zoning lawsuit but does not petition in a timely manner as defined in (a) and (b) above;

2. The Council determines the municipal plan does not adequately address the municipal fair share; and

3. The developer offers a site that is suitable, pursuant to N.J.A.C. 5:92-9.

(e) Municipalities that have filed housing elements with the Council may amend their housing elements prior to petitioning for substantive certification and prior to the initiation of an exclusionary zoning suit. However, such an amendment shall not extend the period in which a community may petition for certification and receive the considerations outlined in (a) and (b) above.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Water Pollution Control Act
Civil Administrative Penalties and Reporting Requirements

Proposed Repeal: N.J.A.C. 7:14A-8.13
Proposed Repeal and New Rule: N.J.A.C. 7:14A-3.10
Proposed Amendments: N.J.A.C. 7:14-8, 7:14A-1.9, 7:14A-2.5 and 7:18-6.6

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1D-9, 58:1A-1 et seq., 58:10A-1 et seq., 58:10A-21, 58:11-49 et seq., 58:11-64 et seq., P.L.1990, c.28.

DEP Docket Number: 014-91-03.

Proposal Number: PRN 1991-189.

A **public hearing** concerning this proposal will be held on May 2, 1991 beginning at 10 A.M. at:

Labor Education Center, IMLR
Rutgers University
Ryders Lane, Clifton Avenue
New Brunswick, New Jersey

Submit written comments by May 15, 1991 to:

Samuel A. Wolfe, Esq.
Administrative Practice Officer
Office of Legal Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Clean Water Enforcement Act, P.L.1990, c.28, modified the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. This new legislation requires the Department to impose mandatory minimum penalties for certain violations and requires stricter accountability on the part of both public and private permit holders. These rules reflect these legislative requirements concerning the Department's assessment of civil administrative penalties for violations of the Water Pollution Control Act, as amended by the Clean Water Enforcement Act.

In a related matter, the Department has solicited public comment on its preproposal concerning amendments to the Department's pretreatment rules (see 23 N.J.R. 149(a)). That preproposal included the enforcement aspects of the pretreatment program, including a delegated local agency's enforcement responsibilities. The Department intends to propose in May 1991 additional amendments to further address those enforcement issues under the Clean Water Enforcement Act.

The Clean Water Enforcement Act makes the amendatory portions of P.L.1990, c.28, §.5 applicable only to violations which occur after July 1, 1991 (see P.L.1990, c.28, §.5). In addition, all other amendments to N.J.S.A. 58:10A-10 et seq. will be effective as of July 1, 1991 (see P.L.1990, c.28, §.20). Furthermore, the Act requires that the Department adopt, by regulation, a uniform assessment of civil administrative penalties policy by January 1, 1992 (see P.L.1990, c.28, §.5). These rules constitute that uniform assessment policy.

The Department expects to adopt the rules being proposed today by July 1, 1991. If the Department does not adopt these rules until after July 1, 1991, these rules will apply to all violations which occur between

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July 1, 1991 and the effective date of these rules, as well as after the effective date, pursuant to the Clean Water Enforcement Act.

Consistent with the Clean Water Enforcement Act, the Department proposes to use this subchapter to assess civil administrative penalties for any violations concerning the Act Concerning Pretreatment of Industrial Wastewater, N.J.S.A. 58:11-49 et seq.

The Department is proposing to modify several of the existing definitions in N.J.A.C. 7:14-8.2 as well as adding additional definitions required by the Clean Water Enforcement Act. The most important of these include new definitions of "serious violations" and "significant noncompliers." Additional definitions being proposed which are not in the Water Pollution Control Act as amended by the Clean Water Enforcement Act include "discharge monitoring report," "LC50," "monitoring report form," "NOEC" or "no observable effect concentration," "sludge quality assurance report" or "SQAR," "violator" and "whole effluent toxicity."

The Department is also proposing to modify N.J.A.C. 7:14-8.3 to reflect the new statutory requirement that violators will be liable for interest payments, according to the schedule of interest rates on judgments established by the New Jersey Supreme Court, for the nonpayment of penalties that are due and owing. In addition, the statute now provides that any such outstanding penalty is a debt of the violator, which the Department may docket with the clerk of the Superior Court with the same effect as a judgment docketed under N.J.S.A. 2A:16-1 et seq. The penalty, once docketed, creates a lien on all New Jersey real property of the violator from the date it is docketed. However, the rule provides that the lien will not attach to the property of a local agency. The violator may avoid the attachment of lien by posting financial security with the Commissioner pursuant to an appeal of a final order to the Appellate Division of the Superior Court. The Department is also proposing changes to its settlement criteria consistent with the Clean Water Enforcement Act.

The Department proposes a new N.J.A.C. 7:14-8.3A to include the statutory requirements concerning the solicitation of public comments on proposed interim enforcement limits. The amendments will require the person seeking interim enforcement limits from the Department to both pay for and provide, after prior approval from the Department, the required public notice.

The Department proposes to modify the procedures to request adjudicatory hearings, pursuant to N.J.A.C. 7:14-8.4, by requiring that the violator include as a part of the hearing request the identification of all affirmative defenses which the violator intends to raise in the hearing. In addition, all violators which are not local agencies will also be required to post financial assurance in the full amount of the penalty in the notice of civil administrative penalty assessment which is being appealed, as required in the Clean Water Enforcement Act.

The Department is proposing several changes to N.J.A.C. 7:14-8.5 in response to the requirement in the Clean Water Enforcement Act that the Department assess minimum mandatory penalties for certain violations. In N.J.A.C. 7:14-8.5(a), the Department proposes to include the statutory mandate that the Department assess civil administrative penalties of not less than $1,000 for each serious violation and not less than $5,000 for each serious violation that causes a violator to be, or continue to be, a significant noncomplier. The Department is proposing to amend the definitions of the seriousness of the violation to reflect the statutory definitions of serious violations and significant noncompliers.

The Department is also proposing additional changes to the procedures for the determination of the amount of civil administrative penalty not required by the Clean Water Enforcement Act, including factoring in the violator's flow at the time of the discharge violation and the classification of the receiving water into the procedure to determine the amount of the civil administrative penalty. By factoring in the violator's flow and the receiving water classification, the Department expects that the resulting penalties will more closely reflect the actual circumstances of an individual violation.

To assess a civil administrative penalty pursuant to N.J.A.C. 7:14-8.5, the Department will start with the same step that is in the existing rules, identifying the midpoint of the applicable range through the consideration of both the violator's conduct and the seriousness of the violation. The Department will then multiply the midpoint by two new factors, the volume of the flow at the time of the violation and the quality of the receiving water of the discharge.

The Department will factor in the volume of the flow of the discharge through the application of one of the following equations:

- DSW flow factor = (0.25 × Log (flow)) + 0.75; or
- DGW flow factor = (0.25 × Log (flow)) + 1.

Examples of what these equations will mean in terms of the values of the flow factors are included below:

Discharges to Surface Water

Flow Volume (MGD)	Flow Factor
0.01	0.25
0.1	0.50
1.0	0.75
10	1.00
100	1.25

Discharges to Ground Water

Flow Volume (MGD)	Flow Factor
0.01	0.50
0.1	0.75
1.0	1.00
10.0	1.25

The Department will factor in the quality of the receiving water based in the receiving water classifications for surface water in N.J.A.C. 7:9-4 and for ground water in N.J.A.C. 7:9-6. The higher the receiving water quality, the higher the factor the Department will assign.

For civil administrative penalties for submitting inaccurate or false information pursuant to N.J.A.C. 7:14-8.6, the Department proposes to change the bottoms of the ranges, but will retain the use of the midpoint of the range as the starting point in determining the amount of the civil administrative penalty. This will allow the Department to consider more of the case-specific circumstances of a particular violation.

Similarly in N.J.A.C. 7:14-8.7, the Department proposes to change the bottoms of the ranges, but will retain the use of the midpoint of the range as the starting point in determining the amount of the civil administrative penalty.

In addition to proposing the amendments required by the Clean Water Enforcement Act, the Department also is proposing to amend N.J.A.C. 7:14-8.8, concerning civil administrative penalties for conducting unapproved activities. The existing rules identify the cost of the illegal facility as the basis upon which the Department assesses the civil administrative penalty. Over the application of this rule during the past two years, the Department has determined that the wide disparity in the cost of such facilities has not provided a sufficient and consistent deterrent to these types of illegal activities. A better measure more consistent with the specific type of unapproved activity is flow, as it is more relevant to the potential adverse impacts on the environment as a result of the illegal activity.

Pursuant to the Clean Water Enforcement Act, the Department proposes to amend N.J.A.C. 7:14-8.9 to require the Department to assess civil administrative penalties of not less than $100.00 for each effluent parameter a permit holder omits on a discharge monitoring report, up to a maximum of $50,000 per month for any one discharge monitoring report. The Department also proposes to change the bottoms of the ranges, but will retain the use of the midpoint of the range as the starting point in determining the amount of the civil administrative penalty.

The Clean Water Enforcement Act requires the Department to adopt significant noncompliance equivalents for parameters not measured in concentration or mass. The Department has proposed to include some of these in N.J.A.C. 7:14-8.5. The Department proposes a new N.J.A.C. 7:14-8.12 for the assessment of civil administrative penalties for violations of whole effluent toxicity limitations. Consequently, the Department proposes to renumber the existing N.J.A.C. 7:14-8.12 to 8.13.

The Department proposes to modify the section on economic benefit, which is being recodified from N.J.A.C. 7:14-8.12 to 8.13, to include a partial listing of some of the financial gains which may be included in economic benefit. The Department has also proposed some of the factors to be considered when determining the amount of the economic benefit. If this information is not available to the Department when it issues a notice of civil administrative penalty assessment, the Department will reserve its right to obtain this information during discovery and amend the notice of civil administrative penalty assessment accordingly prior to the adjudicatory hearing on the penalty.

The Department proposes to include a new N.J.A.C. 7:14-8.14 concerning assessment of civil administrative penalties for the violation of information requests, subpoenas and destruction of records. The Clean Water Enforcement Act provides authority for the Department to issue information requests and administrative subpoenas.

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In addition to changes to its civil administrative penalty rules, the Department is also proposing to modify some of its substantive permitting rules in N.J.A.C. 7:14A to coincide with the proposals summarized above. One of those changes include amendments to the definitions in N.J.A.C. 7:14A-1.9 to ensure consistency of those rules with the rules in N.J.A.C. 7:14-8.

The Department proposes to amend N.J.A.C. 7:14A-2.5, conditions applicable to all permits, to include requirements that: all permit holders with effluent limits expressed as either daily maximums or daily minimums without monthly averages report the average of maximum or minimum values obtained during the reporting period; all permit holders with a point source discharge submit reporting forms to the Department on a monthly basis for all those parameters that are required to be monitored monthly; and any permit holder that becomes a significant noncomplier for one or more specific parameters automatically adjust its reporting frequencies for that parameter to monthly until the violator achieves six consecutive months of compliance for that specific parameter. These changes are mandated by the Clean Water Enforcement Act to enable the Department to determine when violations of daily maximums and daily minimums are serious violations which trigger minimum mandatory penalties.

Finally, the Department proposes to replace the current rules in N.J.A.C. 7:14A-3.10 concerning additional conditions applicable to all DSW permits, with rules concerning the reporting of bypasses, upsets, and testing and laboratory errors, and the use of these as affirmative defenses to certain violations. The Clean Water Enforcement Act specifies the reporting requirements for upsets, bypasses and testing or laboratory error as preconditions that a violator must meet in order to be able to raise an affirmative defense to a civil administrative penalty that a particular violation was caused by an upset, bypass or testing or laboratory error. The proposed amendments reflect those new statutory requirements.

Social Impact

The Department's proposal to implement the Clean Water Enforcement Act will have a positive social impact by further discouraging noncompliance. As the Legislature declared in the Water Pollution Control Act, "[i]t is the policy of this State to restore, enhance, and maintain the chemical, physical, and biological integrity of its waters, to protect public health, to safeguard fish and aquatic life and scenic and ecological values, and to enhance the domestic, municipal, recreational, industrial and other uses of water." N.J.S.A. 58:10A-2. The Legislature reemphasized this declaration by recently mandating that the Department assess certain mandatory minimum penalties for violations of the Water Pollution Control Act.

Economic Impact

For those who comply with the Water Pollution Control Act, no economic impact will occur; the economic impact of this chapter will only be felt by violators. The extent of the economic impact on the violators will depend on a variety of factors including the conduct of the violator, the particular provision violated, and the extent of the environmental damage. The Legislature, in amending the penalty provisions of the Water Pollution Control Act, has mandated that violators be subject to certain minimum mandatory penalties. This removal of the Department's discretion in assessing civil administrative penalties was intended as a greater deterrence of illegal activity.

Environmental Impact

This rulemaking is intended to serve as a strong deterrent to those who would violate the Water Pollution Control Act. The Department anticipates that the proposed amendments will provide the regulated community with a stronger incentive to conduct their activities in conformance with the Department's rules, thereby protecting public health and the natural resources of this State.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that approximately 225 of the permittees affected by these amendments and new rules are small businesses. These amendments and new rules will require certain permittees to report limited additional information on the discharge monitoring reports which they are required to submit under existing rules. In addition, the amendments and new rules will replace the existing recordkeeping and reporting requirements in N.J.A.C. 7:14A-3.10 with new requirements for violators intending to raise affirmative defenses concerning upsets and bypasses in an adjudicatory hearing on a civil administrative penalty. The proposed amendments and new rules will not impose any other reporting, recordkeeping or other compliance requirements on small businesses operating in compliance with the Water Pollution Control Act and the rules promulgated thereunder.

The Department does not expect that the proposed amendments and new rules will require small businesses to obtain any additional professional services. There are no initial capital costs of compliance with the additional requirements for the discharge monitoring reports, and any annual costs should be minimal. With respect to the requirements for notice of affirmative defenses to be raised in adjudicatory hearings, there are no initial capital costs for compliance; the cost of providing the requisite notice is minimal. There are no initial capital costs of compliance with the additional requirements for the discharge monitoring reports, and any annual costs should be minimal. These minimal costs cannot be reduced for small businesses without risk to public health, safety, welfare and the environment.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 8. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:14-8.1 Authority and purpose

(a) **The purpose of this subchapter is to establish a civil administrative penalty policy governing the uniform assessment of civil administrative penalties.** This subchapter shall **also** govern the Department's assessement of civil administrative penalties for violations of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., including violation of any rule **or regulation**, water quality standard, effluent limitation, administrative order or permit issued pursuant to the Water Pollution Control Act, violation of the rules governing laboratory certification and standards of performance, N.J.A.C. 7:18, and for violations of **the Act Concerning Pretreatment of Industrial Wastewater, N.J.S.A. 58:11-49 et seq.,** the Water Supply and Wastewater Operators' Licensing Act, N.J.S.A. 58:11-64 et seq., the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., and N.J.S.A. 58:10A-21 et seq. (also known as the New Jersey Underground Storage of Hazardous Substances Act). **In addition, this subchapter shall govern the Department's administrative assessment of costs pursuant to N.J.S.A. 58:10A-10d(1)(c).** This subchapter shall also govern the procedure for requesting an adjudicatory hearing on a notice of civil administrative penalty assessment or an administrative order.

(b) through (c) (No change.)

(d) Neither the assessment of a civil administrative penalty nor the payment of any such civil administrative penalty shall [be deemed to] affect the availability of any other enforcement provision provided for by N.J.S.A. 58:10A-10, or any other statute, in connection with the violation for which the assessment is levied.

7:14-8.2 Definitions

As used in this subchapter, the following words and terms shall, in addition to those provided in N.J.A.C. 7:14A-1.9, have the following meanings unless the context clearly indicates otherwise:

"Bypass" means the anticipated or unanticipated intentional diversion of waste streams from any portion of a treatment works.

"Delegated local agency" means a local agency with an industrial pretreatment program approved by the Department.

"Discharge" means an intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of a pollutant into the waters of the State, onto land or into wells from which it might flow or drain into such waters, or into waters or onto lands outside the jurisdiction of the State which pollutant enters the waters of the State, and shall include the release of any pollutant into a municipal treatment works.

"Discharge monitoring report" or "DMR" means the Environmental Protection Agency's uniform national form, including any subsequent additions, revisions, modifications and replacements, for the reporting of self-monitoring results by permittees, and includes Baseline Monitoring Reports and BMRs.

"Effluent limitation" means any restriction on quantities, quality, rates and concentration of chemical, physical, thermal, biological, and other constituents of pollutants established by permit, or imposed as

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an interim enforcement effluent limitation pursuant to an administrative order, including an administrative consent order.

"Federal Act" means the "Federal Water Pollution Control Act Amendments of 1972" (Public Law 92-500; 33 U.S.C. §1251 et seq.).

"Hazardous pollutant" means:

1. [Any "toxic pollutant" as defined in N.J.A.C. 7:14A-1.9] **Any toxic pollutant;**

2. [Any "hazardous substance" as defined in N.J.A.C. 7:14A-1.9] **Any hazardous substance defined pursuant to section 3 of P.L. 1976, c.141 (N.J.S.A. 58:10-23.11b);**

3. Any substance regulated as a pesticide under the Federal Insecticide, Fungicide and Rodenticide Act, **Pub.L. 92-516**(7 U.S.C. §135 et seq.);

4. Any substance the use or manufacture of which has been prohibited under the Federal Toxic Substances Control Act, **Pub.L. 94-469**(15 U.S.C. §2601 et seq.);

5. Any substance [listed] **identified** as a known carcinogen [on the registry of the National Institute of Occupational Safety and Health (NIOSH)] **by the International Agency for Research on Cancer**; and

6. [Any "hazardous waste" as defined or identified in N.J.A.C. 7:26-8 or as defined or identified in 40 CFR Part 261] **Any solid waste that is defined or identified as a hazardous waste pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., in N.J.A.C. 7:26-8 or pursuant to 40 CFR Part 261.**

"LC50" means the median lethal concentration of a toxic substance, including an effluent, expressed as a statistical estimate of the concentration that is lethal to 50 percent of the test organisms under specified test conditions, based on the results of an acute toxicity test. For purposes of this subchapter, it includes an EC50, the median effective concentration, based on daphnid immobilization.

"Local agency" means a political subdivision of the State, or an agency or instrumentality thereof, that owns or operates a municipal treatment works.

"Major facility" means any facility or activity classified as such by the Administrator of the United States Environmental Protection Agency, or his or her representative, in conjunction with the Department, and includes industrial facilities and municipal treatment works.

"Monitoring report form" means the standard Department form, including any subsequent additions, revisions or modifications, for the reporting of data pursuant to certain DGW permits.

"NOEC" or "no observable effect concentration" means the highest concentration of a toxic substance, including an effluent, that has no adverse effect on survival, growth, or reproduction of test organisms based upon the results of chronic toxicity testing.

"Permit" means an authorization, license, or equivalent control document issued by the Department to implement the requirements of this chapter even where any or all of the conditions of the permit have been stayed. Permit does not include any permit which requires EPA review pursuant to 40 CFR Part 123.75, such as a "draft permit" or a "proposed permit." Permit includes a letter of agreement entered into between a delegated local agency and a user of its municipal treatment works, setting effluent limitations and other conditions on the user of the agency's municipal treatment works.

"Person" means any entity or natural person, including without limitation any of the following: individual, corporation, company, partnership, firm, association, owner or operator of a treatment works, political subdivision of this State and any state or interstate agency. "Person" shall also include any responsible corporate official for the purpose of enforcement action under section 10 of the State Act.

"Pollutant" means any dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, grease, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, thermal waste, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal or agricultural waste or other residue discharged into the waters of the State.

"Schedule of compliance" or "compliance schedule" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with water quality standards, an effluent limitation or other limitation, prohibition or standard.

"Serious violation" means an exceedance, at any discharge point source, of an effluent limitation, except color, unless the Department uses, on a case-by-case basis, a more stringent factor of exceedance to determine a serious violation and states the specific reasons therefor, which may include the potential for harm to human health or the environment, as follows:

1. For effluent limitations for pollutants that are measured by concentration or mass, except for whole effluent toxicity;

i. Violations of an effluent limitation that is expressed as a monthly average:

(1) By 20 percent or more for a hazardous pollutant; and

(2) By 40 percent or more for a nonhazardous pollutant;

ii. Violations of an effluent limitation that is expressed as a daily maximum or daily minimum without a monthly average:

(1) By 20 percent or more of the average of all of the daily maximum or minimum values for a hazardous pollutant; and

(2) By 40 percent or more of the average of all of the daily maximum or minimum values for a nonhazardous pollutant; and

2. For effluent limitations for whole effluent toxicity and pollutants that are not measured by concentration or mass as follows:

i. Any violation of an efflucent limitation for pH of at least two but less than three standard units outside the range of the pH effluent limitation;

ii. For any violation of an LC50 or a NOEC limit when, upon subtracting the toxicity test result from the whole effluent toxicity limit, the difference is as follows:

Whole Effluent Toxicity Limit (% Effluent)	Difference (% Effluent)
greater than or equal to 80 and less than or equal to 100	greater than or equal to 20
greater than or equal to 50 and less than 80	greater than or equal to 15
greater than 10 and less than 50	greater than or equal to 10
less than or equal to 10	greater than or equal to 9

iii. Any violation of a No Measurable Acute Toxicity (NMAT) limit with greater than or equal to 50 percent mortality in any test concentration, including 100% effluent.

"Significant noncomplier" or "SNC" means any person, except a local agency for an exceedance of an effluent limitation for flow, who commits any of the violations described below, unless the Department uses, on a case-by-case basis, a more stringent frequency or factor of exceedance to determine a significant noncomplier and the Department states the specific reasons therefor, which may include the potential for harm to human health or the environment. Violations which cause a person to become or remain an SNC include:

1. A serious violation for the same pollutant, at the same discharge point source, in any two months of any consecutive six month period;

2. Exceedance of an effluent limitation expressed as a monthly average, for the same pollutant, at the same discharge point source, by any amount in any four months of any consecutive six month period;

3. If there is not an effluent limitation for a particular pollutant expressed as a monthly average, exceedance of the monthly average of the daily maximums for the effluent limitation, for the same pollutant, at the same discharge point source, by any amount in any four months of any consecutive six month period; or

4. Failure to submit a completed discharge monitoring report in any two months of any consecutive six month period.

"Sludge Quality Assurance Report" or "SQAR" means the standard Department form, including any subsequent additions, revisions or modifications, for the reporting of sludge quality and quantity.

"State Act" means the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

"Toxic pollutant" means those pollutants, or combinations of pollutants, including disease causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly or indirectly by ingestion through food chains, may, on the basis of information available to the Department, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformation, in such organisms or their offspring, identified

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pursuant to section 307 of the Federal Act, 33 U.S.C. §1317, or Section 4 of the State Act, N.J.S.A. 58:10A-4.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with an effluent limitation because of an event beyond the reasonable control of the permittee, including fire, riot, sabotage, or a flood, storm event, natural cause, or other act of God, or other similar circumstance, which is the cause of the violation. "Upset" also includes noncompliance consequent to the performance of maintenance operations for which a prior exception has been granted by the Department or a delegated local agency.

"Violator" means any person against whom the Department asserts a violation of the State Act or any rules issued pursuant to the Water Pollution Control Act.

"Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

7:14-8.3 Procedures for assessment, payment and settlement of civil administrative penalties, **and affirmative defenses**

(a) (No change.)

(b) Payment of the civil administrative penalty is due upon receipt by the violator of the Department's Final Order in a contested case, or when a Notice of Civil Administrative Penalty Assessment becomes a Final Order, as follows:

1. If no hearing is requested pursuant to N.J.A.C. 7:14-8.4, a Notice of Civil Administrative Penalty Assessment becomes a Final Order **and is deemed received** on the 21st day following receipt of the Notice of Civil Administrative Penalty Assessment by the violator;

2. through 3. (No change.)

(c) In addition to the amount of the civil administrative penalty that is due and owing pursuant to (b) above, the violator shall also pay to the Department the interest on the amount of the penalty, at the rate established by the New Jersey Supreme Court for interest rates on judgments as set forth in the Rules Governing the Courts of the State of New Jersey, as follows:

1. Interest shall accrue on the amount of the civil administrative penalty due and owing beginning on the 30th day after the date on which the penalty was due and owing and continuing until the civil administrative penalty is paid in full with interest if:

i. A violator does not pay a civil administrative penalty imposed pursuant to a final order; or

ii. A violator fails to make a civil administrative penalty payment pursuant to a payment schedule entered into with the Department; and

2. Interest, at the rate set forth in (c)1 above, shall accrue on the unpaid amount of a civil administrative penalty which is contested as a contested case under N.J.S.A. 52:14B-1 et seq., or appealed to the Appellate Division of the Superior Court, and upheld in full or in part, from the date the violator posted financial assurance under N.J.A.C. 7:14-8.4(a)9 until the violator pays in full the civil administrative penalty and all interest accrued thereon.

(d) A civil administrative penalty imposed pursuant to a final order shall constitute a debt of the violator or discharger. The Department may docket the penalty with the clerk of the Superior Court. The penalty, as docketed, shall have the same standing as any judgment docketed pursuant to N.J.S.A. 2A:16-1, except that:

1. No lien shall attach to the property of a local agency; and

2. No lien shall attach to the real property of a violator if the violator posts a refundable bond or other security with the Commissioner pursuant to an appeal of a final order to the Appellate Division of the Superior Court.

[(c)]**(e)** The Department may settle any civil administrative penalty assessed pursuant to this subchapter [on the following terms and conditions] **according to the factors identified in (f) below as follows:**

1. In cases where the violator is a local agency which violates an administrative consent order, the Department may settle a civil administrative penalty as follows:

i. The Department may reduce the civil administrative penalty up to 50 percent, provided that the penalty as reduced is not less than any applicable minimum amount set forth in N.J.A.C. 7:14-8.5(a) or 8.9(e); and

ii. The Department may not reduce the amount of any component of a civil adminstrative penalty which represents the economic benefit gained by the violator from the violation;

2. Except as provided in (e)1 above, in the case of a violator who is a local agency which violates something other than an administrative consent order and then enters into an administrative consent order with the Department, which requires the local agency to take prescribed measures to comply with its permit, the Department shall have full discretion to settle the amount of the civil administrative penalty assessed or due for violations occurring during a period up to 24 months preceding the effective date of the administrative consent order, except that the Department shall neither:

i. Reduce the amount of the civil administrative penalty less than the minimum amount, if applicable, prescribed in N.J.A.C. 7:14-8.5(a) or 8.9(e); nor

ii. Reduce the amount of any component of a civil administrative penalty which represents the economic benefit gained by the violator from the violation.

3. In the case of all other violators:

i. The Department may reduce the civil administrative penalty up to 50 percent, provided that the penalty as reduced is not less than any applicable minimum amount set forth in N.J.A.C. 7:14-8.5(a) or 8.9(e); and

ii. The Department may not reduce the amount of any component of a civil administrative penalty which represents the economic benefit gained by the violator from the violation:

(f) In settling a civil administrative penalty, the Department may consider the following:

1. [On the basis of mitigating] **Mitigating** or extenuating circumstances not considered in the notice of civil administrative penalty assessment;

2. [Upon] **The** implementation by the violator of pollution prevention and/or abatement measures in addition to those minimally required by applicable statute or rule;

3. [Upon] **The** implementation by the violator of measures to clean up, reverse or repair environmental damage previously caused by the violation;

4. [Upon] **The** full payment by the violator of a specified part of the civil administrative penalty assessed if made within a time period established by the Department in an administrative order and/or a notice of civil administrative penalty assessment and provided that the violator waives the right to request an adjudicatory hearing on the civil administrative penalty; or

5. [Upon any] **Any** other terms or conditions acceptable to the Department.

(g) Any violator who is seeking a civil administrative penalty payment schedule of more than 90 days shall, as a precondition of that schedule in lieu of full payment upon the civil administrative penalty becoming due and owing, post financial assurance with the Department for the full amount of the civil administrative penalty pursuant to one of the financial assurance mechanisms in Appendix A.

(h) Any violator that is not a local agency which enters into an administrative consent order with the Department that includes a compliance schedule shall post financial assurance in the full amount of the cost of fully complying with all of the terms and conditions imposed by the Department pursuant to one of the financial assurance mechanisms in Appendix A, incorporated herein by reference.

(i) Except as provided in (i)1 below, a violator may be entitled to an affirmative defense to liability for a violation of an effluent limitation occurring as a result of an upset, an anticipated or unanticipated bypass, or a testing or laboratory error, only if, in the determination of the Department, the violator has satisfied the provisions of this section.

1. A violator shall not be entitled to an affirmative defense based on an alleged upset, an anticipated or unanticipated bypass, or a testing or laboratory error to the extent that the violation is caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

2. A violator shall be entitled to an affirmative defense only if, in the determination of the Department, the violator satisfies the following:

i. The violation occurred as a result of an upset, an anticipated or unanticipated bypass, or a testing or laboratory error;

ii. The violator complied with all of the requirements in N.J.A.C. 7:14A-3.10;

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iii. The violator complied with N.J.A.C. 7:14A-8.4(a)7; and

iv. A violator asserting a testing or laboratory error as an affirmative defense shall also have the burden to demonstrate that a serious violation involving the exceedance of an effluent limitation was the result of unanticipated test interferences, sample contamination, analytical defects, or procedural deficiencies in sampling or other similar circumstances beyond the violator's control.

3. If the Department determines that an exceedance of an effluent limitation was caused by an upset, an anticipated or unanticipated bypass, or a testing or laboratory error, the Department shall not consider the exceedance a violation and the Department shall not assess a civil administrative penalty.

4. The Department shall consider the exceedance of an effluent limitation a violation if the Department determines that any of the following conditions exist:

i. The exceedance was not caused by an upset, an anticipated or unanticipated bypass, or a testing or laboratory error;

ii. The violator has not complied with the reporting requirements in N.J.A.C. 7:14A-3.10; or

iii. The violator has not complied with N.J.A.C. 7:14A-8.4(a)7.

7:14-8.3A Public comment on interim enforcement limits

(a) The procedures for soliciting public comment on proposed interim enforcement limits in administrative consent orders are provided in this section.

1. The Department will require the violator to provide notice of proposed interim enforcement limits and of an opportunity, for at least 30 days from the publication of the notice, to comment on the proposal.

2. The violator shall submit to the Department a proposed plan to provide the public notice required in (b) through (d) below.

3. Upon the violator's receipt of the Department's written approval of the violator's plan to provide public notice, the violator shall provide the public notice as approved by the Department.

(b) The violator shall provide the following public notice of the proposed interim enforcement limits:

1. At least three days prior to publication of the public notice required in (b)2 below, the violator shall mail a copy of the public notice and the draft administrative consent order or other document which includes the proposed interim enforcement limits to:

i. The mayor or chief executive officer and governing body of the municipality and county in which the violations occurred; and

ii. Any other interested persons the Department identifies.

2. The violator shall publish the public notice in a daily or weekly newspaper within the area affected by the facility which is the subject of the interim enforcement limits.

(c) The violator shall include the following in the public notice:

1. The name and address of the violator upon which the Department will impose the interim enforcement limits;

2. The beginning and ending dates of the public comment period;

3. A description of the nature of the violations necessitating the interim enforcement limits;

4. A summary of the terms and conditions of the legal document in which the interim enforcement limits is contained;

5. The name of the contact person within the Department to contact for more information;

6. The requirement that anyone submitting written comments on the proposed interim enforcement limits shall submit copies of the written comments to both the Department and the violator; and

7. The name and address of the person for the Department and the violator to whom members of the public may submit written comments.

(d) If the Department decides to hold a public meeting on the proposed interim enforcement limits:

1. The violator shall also include in the public notice:

i. The date, time and place of the public meeting; and

ii. A brief description of the nature and purpose of the public meeting, including the applicable rules and procedures;

2. The violator shall publish notice of the public meeting not more than 30 days and not less than 15 days prior to the public meeting;

3. The Department shall hold the public meeting in the municipality in which the violations necessitating the interim enforcement limits occurred;

4. The violator shall attend and participate in the public meeting at the Department's request; and

5. The violator shall, with the prior written approval of the Department, make all necessary arrangements for scheduling and holding the public meeting, including, but not limited to:

i. Scheduling of the meeting room;

ii. Arranging for a court stenographer to record the statements at the public meeting; and

iii. Payment of all costs of the public meeting, including, but not limited to, hearing room costs, security, stenographer, transcript, and the Department's cost associated with the public meeting.

(e) The violator shall submit to the Department proof of publication prior to the Department issuing an administrative order or executing the administrative consent order which includes an interim enforcement limits.

(f) After receiving the comments, but before executing an administrative order or an administrative consent order which includes the interim enforcement limits, the Department will:

1. Evaluate each of the comments received;

2. Respond to the comments received; and

3. Notify each person who submitted written comments of the main provisions of the administrative order or administrative consent order and the final interim enforcement limits and a copy of the Department's responses to the comments.

7:14-8.4 Procedures to request an adjudicatory hearing to contest an administrative order [and/or], a notice of civil administrative penalty assessment **or a notice of civil administrative cost assessment**; procedures for conducting adjudicatory hearings

(a) To request an adjudicatory hearing to contest an administrative order [and/or], a notice of civil administrative penalty assessment, **or a notice of civil administrative cost assessment** issued pursuant to the Water Pollution Control Act, the New Jersey Underground Storage of Hazardous Substances Act, the Water Supply and Wastewater Operators' Licensing Act, or the Water Supply Management Act, the violator shall submit the following information in writing to the Department:

1.-4. (No change.)

5. An estimate of the time required for the hearing (in days and/or hours); [and]

6. A request, if necessary, for a barrier-free hearing location for physically disabled persons[.];

7. Proof of compliance with all of the requirements in N.J.A.C. 7:14A-3.10 if the violator intends to:

i. Raise an affirmative defense to liability for a civil administrative penalty pursuant to N.J.A.C. 7:14-8.5(a) or 8.9(e) for the violation of an effluent limitation on the basis that a violation of an effluent limitation occurred as a result of an upset, an approved anticipated bypass or unanticipated bypass, or a testing or laboratory error; and

ii. To request that the Department determine through an administrative hearing whether or not it agrees with the violator's allegations concerning the matter;

8. For a notice of civil administrative penalty assessment pursuant to N.J.A.C. 7:14-8.9(e), the following:

i. Documentation of compliance with the requirements in N.J.A.C. 7:14-8.9(e) that the violator notify the Department in writing, within 30 days after the date the violator was required to submit the information to the Department, of extenuating circumstances that prevented timely submission of a complete discharge monitoring report;

ii. Documentation of the violator's correction of the violation by submitting the omitted information within 10 days after the violator's receipt of the notice of the omission; a violator's failure to comply with the notice requirements in N.J.A.C. 7:14-8.9(e) will be a waiver of the violator's right to correct the violation within the required 10-day period and thus avert liability; and

iii. If the violator intends to contest a civil administrative penalty assessed pursuant to N.J.A.C. 7:14-8.9(e) based on the existence of extenuating circumstances beyond the violator's control, documentation that the violator complied with N.J.A.C. 7:14-8.9(e)3; if the violator fails to submit the required information within this 30-day period, the

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violator shall have waived its right to contest the civil administrative penalty in this manner and be barred from doing so; and

9. If the violator is not a local agency, financial assurance in the full amount of the civil administrative penalty in the notice of civil administrative penalty assessment as follows:

i. Financial assurance, in the form of a surety bond guaranteeing payment, an irrevocable letter of credit or a fully funded trust, worded identically to the wording specified in N.J.A.C. 7:14-8 Appendix A; and

ii. A certification of acknowledgement worded identically to the wording specified in N.J.A.C. 7:14-8 Appendix A.

(b) [If] **The Department shall deny the hearing request if** the Department does not receive [the] **a complete** hearing request **pursuant to (a) above** within 20 days after receipt by the violator of the Notice of a Civil Administrative Penalty Assessment [and/or], the Administrative Order, **or Notice of Civil Administrative Cost Assessment** being challenged [the Department shall deny the hearing request]. **A violator's failure to identify in its hearing request those affirmative defenses which the violator intends to raise, as required by (a)7i above, shall operate as a waiver of the violator's right to assert such defenses. A violator's failure to notify the Department in writing, within the 30 days allotted under (a)8i above, of the existence of extenuating circumstances which prevented timely submission of a complete discharge monitoring report, shall be grounds for the Department to deny any hearing request on a notice of civil administrative penalty assessment pursuant to N.J.A.C. 7:14-8.9(e).**

[(c) If the violator fails to include all the information required by (a) above, the Department may deny the hearing request.]

[(d)]**(c)** All adjudicatory hearings held pursuant to this section shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

7:14-8.5 Civil administrative penalty determination

(a) The Department may assess a civil administrative penalty pursuant to this section of not more than $50,000 for each violation of each provision of the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act and for violations of any rule, water quality standards, effluent limitation, administrative order or permit issued pursuant thereto. **The Department shall assess a minimum mandatory civil administrative penalty for violations which occur after June 30, 1991 in an amount:**

1. Not less than $5,000 for each violation that causes a violator to be, or continue to be, a significant noncomplier; or

2. Not less than $1,000 for each serious violation.

(b) through (c) (No change.)

(d) [Unless the Department assesses a civil administrative penalty pursuant to N.J.A.C. 7:14-8.6 through N.J.A.C. 7:14-8.11, the Department shall assess a civil administrative penalty for violations described in this section on the basis of the seriousness of the violation and the conduct of the violator at the mid-point of the following ranges unless adjusted pursuant to (g) below:] **Unless the Department assesses a civil administrative penalty pursuant to N.J.A.C. 7:14-8.6 through N.J.A.C. 7:14-8.12, the Department shall assess a civil administrative penalty for violations described in this section as described in (e) below.**

(e) To assess a civil administrative penalty pursuant to this section, the Department shall:

1. Identify the civil administrative penalty range within the matrix in (f) below by:

i. Determining the seriousness of the violation pursuant to (g) below; and

ii. Determining the conduct of the violator pursuant to (h) below; and

2. For violations of effluent limitations for point source discharges, multiply the midpoint of the range, unless adjusted pursuant to (i) below, by:

i. The flow factor pursuant to (j) below; and

ii. The receiving water factor pursuant to (k) below; and

3. If the product of the multiplication pursuant to (e)2 above is greater than $50,000, then the civil administrative penalty shall be $50,000; or

4. For all other violations, the civil administrative penalty shall be at the midpoint of the range within the matrix in (f) below, unless adjusted pursuant to (i) below.

(f) The matrix of ranges of civil administrative penalties is as follows:

		SERIOUSNESS		
		Major	Moderate	Minor
CONDUCT	Major	$40,000-$50,000	$30,000-$40,000	$15,000-$25,000
	Moderate	$30,000-$40,000	$10,000-$20,000	$ 3,000-[$ 6,000] **$7,000**
	Minor	$15,000-$25,000	$ 3,000-[$ 6,000] **$ 7,000**	$ 1,000-$ 2,500

[(e)]**(g)** The **Department shall determine the** seriousness of the violation [shall be determined] as major, moderate or minor as [follows] **set forth in (g)1 through 3 below. Nothing in the description of seriousness in one level shall prevent the Department from assigning a different level of seriousness to the violation.**

1. Major shall include:

[i. Any violation which has caused or has the potential to cause serious harm to human health or the environment; or]

[ii.]**i.** Any violation of an effluent limitation which is measured by concentration or mass for any discharge exceeding the effluent limitation [set forth in a permit or administrative order] as follows:

(1) By more than 50 percent for a hazardous pollutant; or

(2) By more than 100 percent for a [non-hazardous] **nonhazardous** pollutant;

ii. Any violation of an effluent limitation for pH more than three standard units outside the range of the pH effluent limitation; or

iii. Any other violation not included in (g)1i or ii above which either:

(1) Has caused or has the potential to cause serious harm to human health or the environment; or

(2) Seriously deviates from the requirements of the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act and for violations of any rule, water quality standards, effluent limitation, administrative order or permit issued pursuant thereto; serious deviation shall include, but not be limited to, those violations which are in complete contravention of the requirement, or if some of the requirement is met, which severely impair or undermine the operation or intent of the requirement.

2. Moderate shall include:

i. Any violation, **other than a violation of an effluent limitation identified in (g)2ii or iii below,** which has caused or has the potential to cause substantial harm to human health or the environment; [or]

ii. Any violation of an effluent limitation which is measured by concentration or mass of any discharge exceeding the effluent limitation [set forth in a permit or administrative order] as follows:

(1) By [26] **20** to 50 percent for a hazardous pollutant; or

(2) By [51] **40** to 100 percent for a [non-hazardous] **nonhazardous** pollutant;

iii. Any violation of an effluent limitation for pH of at least two but less than three standard units outside the range of the pH effluent limitation; or

iv. Any violation, other than a violation of an effluent limitation identified in (g)2ii or iii above, which substantially deviates from the requirements of the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act and for violations of any rule, water quality standards, effluent limitation, administrative order or permit issued pursuant thereto; substantial deviation shall include, but not be limited to, violations which are in substantial contravention of the requirements or which substantially impair or undermine the operation or intent of the requirement.

3. Minor shall include:

i. Any violation, **other than a violation of an effluent limitation identified in (g)3ii or iii below,** not included in [(e)]**(g)**1 or 2 above; or

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ii. Any violation of an effluent limitation which is measured by concentration or mass for any discharge exceeding the effluent limitation [set forth in a permit or administrative order] as follows:

(1) By [up to 25] **less than 20** percent for a hazardous pollutant; or

(2) By [up to 50] **less than 40** percent for a [non-hazardous] **nonhazardous** pollutant[.]; **or**

iii. Any violation of an effluent limitation for pH less than two standard units outside the range of the pH effluent limitation.

[(f)](**h**) The **Department shall determine** the conduct of the violator [shall be determined] as major, moderate or minor as follows:

1. Major shall include any intentional, deliberate, purposeful, knowing or willful act or omission by the violator;

2. Moderate shall include any unintentional but foreseeable act or omission by the violator; or

3. Minor shall include any other conduct not included in [(f)](**h**) 1 or 2 above.

[(g)](**i**) The Department may, in its discretion, [adjust the amount determined pursuant to (d) above to assess a civil administrative penalty in] **move from the midpoint of the range to** an amount no greater than the maximum amount nor less than the minimum amount in the range on the basis of the following factors:

1. through 3. (No change.)

4. The deterrent effect of the penalty; [or]

[5. Other specific circumstances of the violator or violation.]

5. The cooperation of the violator in correcting the violation, remedying any environmental damage caused by the violation and ensuring that the violation does not reoccur;

6. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation; and

7. Any impacts on the receiving water, including stress upon the aquatic biota, or impairment of receiving water uses, such as for recreational or drinking water supply, resulting from the violation.

(j) The flow factor shall be determined as follows:

i. For discharges to surface water, the flow factor is the product of the following equation, using the flow at the time of the discharge, or if that flow is unavailable the last prior flow reported, expressed in million gallons per day (MGD), except that if the actual flow is less than 0.01MGD then use 0.01MGD in the following equation:

$$\text{DSW flow factor} = (0.25 \times \text{Log(flow)}) + 0.75$$

2. For discharges to ground water the flow factor is the product of the following equation, using the flow at the time of the discharge, or if that flow is unavailable the last prior flow reported, expressed in million gallons per day (MGD), except that if the actual flow is less than 0.001MGD then use 0.001MGD in the following equation:

$$\text{DGW flow factor} = (0.25 \times \text{Log(flow)}) + 1$$

(k) The receiving water factor shall be determined pursuant to the following table:

Receiving water category[1]	Receiving water factor		
	C1	C2	Other
Surface Water			
FW1			**2.5**
FW2, TP	**2.0**		
FW2, TM	**2.0**	**1.5**	
FW2, NT	**1.5**	**1.0**	
PL			**2.25**
SC	**1.5**	**1.0**	
SE1	**2.0**	**1.5**	
SE2	**1.5**	**1.0**	
SE3	**1.0**	**0.5**	
Delaware River			
Zone 1		**1.5**	
Zone 2		**1.5**	
Zone 3		**1.0**	
Zone 4		**1.0**	
Zone 5		**1.0**	
Zone 6	**1.5**		
Ground Water			
GW1			**2.0**
GW—all other			**1.0**
Indirect Discharge			**1.0**

[1]The receiving water classifications in this table are based on definitions of surface water classifications in N.J.A.C. 7:9-4, ground water classifications in N.J.A.C. 7:9-6, and indirect discharge in N.J.A.C. 7:14A-1.9.

7:14-8.6 Civil administrative penalty for submitting inaccurate or false information

(a) through (b) (No change.)

(c) The Department shall assess a civil administrative penalty for violations described in this section based on the conduct of the violator at the [mid-point] **midpoint** of the following ranges except as adjusted pursuant to (d) below:

1. For each intentional, deliberate, purposeful knowing or willful act or omission by the violator, the civil administrative penalty shall be in an amount [of not more than] **up to** $50,000 [nor less than $40,000] per act or omission; [and]

2. For each other violation not identified pursuant to (c)1 above for which the violator does not correct the violation within 10 days after becoming aware of the violation, the civil administrative penalty shall be in an amount up to $30,000; and

[2.]**3.** For each other violation **not identified pursuant to (c)1 above for which the violator corrects the violation within 10 days after becoming aware of the violation,** the civil administrative penalty shall be in [the amount of] **an amount up to** $1,000.

(d) The Department may, in its discretion, adjust the amount determined pursuant to (c) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range on the basis of the following factors:

1. through 3. (No change.)

4. The deterrent effect of the penalty; [or]

[5. Other specific circumstances of the violator or violation.]

5. The cooperation of the violator in correcting the violation, remedying any environmental damage caused by the violation and ensuring that the violation does not reoccur;

6. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation; and

7. Any impacts on the receiving water, including stress upon the aquatic biota, or impairment of receiving water uses, such as for recreational or drinking water supply, resulting from the violation.

7:14-8.7 Civil administrative penalty for failure to allow lawful entry and inspection

(a) through (b) (No change.)

(c) The Department shall assess a civil administrative penalty for violations described in this section at the [mid-point] **midpoint** of the following ranges except as adjusted pursuant to (d) below:

1. For refusing, inhibiting or prohibiting immediate lawful entry and inspection of any premises, building or place for which an administrative order or permit exists under the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act, the civil administrative penalty shall be in an amount [of not more than $30,000 nor less than $20,000] **up to $50,000**; and

2. For any other refusal, inhibition or prohibition of immediate lawful entry and inspection, the civil administrative penalty shall be in an amount [of not more than $5,000 nor less than $3,000] **up to $8,000**.

(d) The Department may, in its discretion, adjust the amount determined pursuant to (c) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range on the basis of the following factors:

1. through 3. (No change.)

4. The deterrent effect of the penalty; [or]

[5. Other specific circumstances of the violator or violation.]

5. The cooperation of the violator in correcting the violation, remedying the damage caused by the violation and ensuring that the violation does not reoccur;

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6. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation; and

7. Any impacts on the receiving water, including stress upon the aquatic biota, or impairment of receiving water uses, such as for recreational or drinking water supply, resulting from the violation.

7:14-8.8 Civil administrative penalty for conducting unapproved activities

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who:

1. Approves, endorses, **allows construction or operation to commence or proceed,** builds, **substantially** modifies, **installs, replaces, expands** or operates a facility or treatment works, as defined by N.J.A.C. 7:14A[-1 et seq.], without the proper authorization or in violation of any rule, administrative order, **sewer connection ban,** or permit issued **or imposed** pursuant to the Water Pollution Control Act; or

2. Replaces, expands, or substantially modifies a facility as defined by N.J.A.C. [7:14C-1 et seq.] **7:14B**, in violation of any rule, administrative order or permit issued pursuant to the New Jersey Underground Storage of Hazardous Substances Act.

(b) The Department shall determine the amount of the civil administrative penalty for violations described in this section based on the seriousness of the violation and the conduct of violator [in accordance with N.J.A.C. 7:14-8.5 or] based on the following:

[1. For the approval or endorsement of a treatment works, the penalty shall be in an amount equal to 25 percent of the capital costs of the facility or treatment works up to a maximum of $50,000 per violation.

2. For the building, installation, substantial modification, replacement or expansion of a facility or treatment works, the civil administrative penalty shall be in an amount equal to 50 percent of the capital cost of the facility or treatment works up to a maximum of $50,000 per violation per day or part thereof that the construction of the facility or treatment works continues without the required Department approval.

3. For the operation of any facility or treatment works, the civil administrative penalty shall be in an amount equal to 100 percent of the capital costs of the facility or treatment works to a maximum of $50,000 per violation per day or part thereof that the operation of the facility or treatment works continues without the required Department approval.]

1. For any unauthorized approval, endorsement or allowance to commence or proceed to build, substantially modify, install, replace, expand or operate a facility or treatment works the civil administrative penalty shall be in an amount determined as follows:

civil administrative penalty =
(seriousness) × (conduct) × ($1.00)

i. The seriousness factor shall be equal to one-half of the design flow (in gallons) indicated in the CP-1 Permit Application for that facility or project, or if there is no CP-1 Permit Application or if the design flow is not indicated on the CP-1 Application, then from the Contributory Design Flow table in N.J.A.C. 7:9-1; and

ii. The conduct factor is either:

(1) 1.00 if the conduct is intentional, deliberate, purposeful, knowing or willful; or

(2) 0.75 for any other conduct.

iii. Each approval, endorsement or allowance to commence or proceed shall be considered an additional, separate and distinct violation;

2. For the building, installation, substantial modification, replacement or expansion of a facility or treatment works without the required Department approval, the civil administrative penalty shall be in an amount determined as follows:

civil administrative penalty =
(seriousness) × (conduct) × ($1.00)

i. The seriousness factor shall be equal to one-half of the design flow (in gallons) as determined from the CP-1 Permit Application for that facility or project, or if there is no CP-1 Permit Application or if the design flow is not indicated on the CP-1 Application, then from the Contributory Design Flow table in N.J.A.C. 7:9-1.

ii. The conduct factor is either:

(1) 1.00 if the conduct is intentional, deliberate, purposeful, knowing or willful; or

(2) 0.75 for any other conduct.

iii. Each day or part thereof that the construction of the facility or treatment works continues without the required Department approval shall be considered an additional, separate and distinct violation.

3. For the operation of any facility or treatment works, the civil administrative penalty shall be in an amount equal to, at the sole discretion of the Department; either:

i. Twice the total penalty for the illegal building, installation, substantial modification, replacement or expansion of a facility of treatment works calculated pursuant to (b)2 above; or

ii. Equal to the product of the following equation:

civil administrative penalty =
(seriousness) × (conduct) × ($1.00)

(1) The seriousness factor shall be equal to the total design flow (in gallons) as determined from the CP-1 Permit Application for that facility or project, or if there is no CP-1 Permit Application or if the design flow is not indicated on the CP-1 Application, then from the Contributory Design Flow table in N.J.A.C. 7:9-1.

(2) The conduct factor shall be either:

(A) 1.00 if the conduct is intentional, deliberate, purposeful, knowing or willful; or

(B) 0.75 for any other conduct.

(3) Each day or part thereof that the operation of the facility or treatment works continues without the required Department approval shall be considered an additional, separate and distinct violation.

7:14-8.9 Civil administrative penalty for failure to properly conduct monitoring or sampling under the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who fails to carry out monitoring or sampling activities or to submit [discharge or monitoring reports] **discharge monitoring reports, baseline monitoring reports, monitoring report forms or sludge quality assurance reports** required by the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act or any rule, water quality standard, effluent limitation, administrative order or permit issued pursuant thereto.

(b) (No change.)

(c) **Except as provided in (e) below,** [The] **the** Department shall assess a civil administrative penalty for violations described in this section based on the conduct of the violator at the [mid-point] **midpoint** of the following ranges except as adjusted pursuant to (d) below:

1. For any intentional, deliberate, purposeful, knowing or willful act or omission by the violator[s], the civil administrative penalty shall be in an amount [of not more than] **up to** $50,000 [nor less than $40,000];

2. For any unintentional but foreseeable act or omission by the violator, the civil administrative penalty shall be in amount [not more than $40,000 nor less than $30,000] **up to $40,000**; or

3. For any other violations the civil administrative penalty shall be in an amount [not more than $25,000 nor less than $15,000] **up to $20,000**.

(d) The Department may, in its discretion, adjust the amount determined pursuant to (c) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range on the basis of the following factors:

1. through 3. (No change.)

4. The deterrent effect of the penalty; [or]

[5. Other specific circumstances of the violator or violation.]

5. The cooperation of the violator in correcting the violation remedying the damage caused by the violation and ensuring that the vioation does not reoccur;

6. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation; and

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7. Any impacts on the receiving water, including stress upon the aquatic biota, or impairment of receiving water uses, such as for recreational or drinking water supply, resulting from the violation.

(e) For any person's failure to submit a complete discharge monitoring report, the Department shall assess a minimum mandatory civil administrative penalty of not less than $100.00 for each effluent parameter omitted on a discharge monitoring report, nor greater than $50,000 per month for any one discharge monitoring report, for any discharge monitoring report required to be submitted after June 30, 1991.

1. The civil administrative penalty assessed pursuant to (e) above shall begin to accrue on the fifth day after the date on which the discharge monitoring report was due and shall continue to accrue at least for 30 days if the violation is not corrected.

2. The Department may continue to assess civil administrative penalties for the failure to submit a complete discharge monitoring report beyond the 30-day period referenced in (e)1 above until the violation is corrected.

3. A violator shall submit evidence of extenuating circumstances beyond the control of the permittee within 30 days after the date on which the effluent parameter information was required to be submitted to the Department in order to contest a civil administrative penalty assessed pursuant to this section. If the violator fails to submit the required information within this 30-day period, the violator shall have waived its right to contest the civil administrative penalty in this manner and be barred from doing so.

4. A violator will not be subject to a civil administrative penalty if both of the following conditions are met:

i. The violator submits the omitted information to the Department within 10 days after receipt by the violator of notice of the omission; and

ii. The violator demonstrates to the satisfaction of the Department that the violation for which the Department assessed the civil administrative penalty was due to an inadvertent omission by the violator of one or more effluent parameters, provided, however, that the Department shall not be required to consider such evidence if the violator has not complied with (e)3 above.

7:14-8.12 Civil administrative penalty for violation of whole effluent toxicity limitations

(a) The Department may assess a civil administrative penalty for violations of whole effluent toxicity limitations expressed as median Lethal Concentration (LC50), a No Observable Effect Concentration (NOEC), or No Measureable Acute Toxicity (NMAT) pursuant to this section.

(b) Each violation of a whole effluent toxicity limitation shall constitute an additional, separate and distinct violation.

(c) To assess a civil administrative penalty pursuant to this section the Department shall:

1. Identify the civil administrative penalty range pursuant to (d) or (e) below;

2. Multiply the midpoint of the range, unless adjusted pursuant to (f) below, by:

i. The flow factor pursuant to (g) below; and

ii. The receiving water factor pursuant to (h) below; and

3. If the product of the multiplication pursuant to (c)2 above is greater than $50,000, then the civil administrative penalty shall be $50,000.

(d) The Department shall determine the range for the civil administrative penalty for violations of whole effluent toxicity limitations expressed as median Lethal Concentration (LC50) or a No Observable Effect Concentration (NOEC), described in this section as follows, except as adjusted pursuant to (e) below:

1. For any violation of an LC50 or a NOEC limit included in the following table, the civil administrative penalty shall be in an amount up to $50,000, when upon subtracting the toxicity test result from the whole effluent toxicity limit, the difference is as follows:

Whole Effluent Toxicity Limit (% Effluent)	Difference (% Effluent)
greater than or equal to 80 and less than or equal to 100	greater than or equal to 20
greater than or equal to 50 and less than 80	greater than or equal to 15
greater than 10 and less than 50	greater than or equal to 10
less than or equal to 10	greater than or equal to 9

2. For any other violation of an LC50 or a NOEC limit the civil administrative penalty shall be in an amount up to $40,000.

(e) The Department shall assess a civil administrative penalty for violations of whole effluent toxicity limitations expressed as No Measurable Acute Toxicity (NMAT) based on the extent of the violator's exceedance of the whole effluent toxicity limitation at the midpoint of the following ranges except as adjusted pursuant to (f) below:

1. For any violation of a NMAT limit with greater than or equal to 50% mortality in any test concentration, including 100 percent effluent, the civil administrative penalty shall be in an amount up to $50,000;

2. For any other violation of a NMAT limit the civil administrative penalty shall be in an amount up to $40,000.

(f) The Department may, in its discretion, adjust the amount determined pursuant to (d) or (e) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range on the basis of the following factors:

1. The compliance history of the violator;

2. The number, frequency and severity of the violation(s);

3. The measures taken by the violator to mitigate the effects of the current violation or to prevent future violations;

4. The deterrent effect of the penalty;

5. The cooperation of the violator in correcting the violation, remedying the damage caused by the violation and ensuring that the violation does not reoccur;

6. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation; and

7. Any impacts on the receiving water, including stress upon the aquatic biota, or impairment of receiving water uses, such as for recreational or drinking water supply, resulting from the violation.

(g) The flow factor shall be determined as follows:

1. For discharges to surface water, the flow factor is the product of the following equation, using the flow at the time of the discharge, or if that flow is unavailable the last prior flow reported, expressed in million gallons per day (MGD), except that if the actual flow is less than 0.01MGD then use 0.01MGD in the following equation:

$$\text{DSW flow factor} = (0.25 \times \text{Log(flow)}) + 0.75$$

2. For discharges to ground water the flow factor is the product of the following equation, using the flow at the time of the discharge, or if that flow is unavailable the last prior flow reported, expressed in million gallons per day (MGD), except that if the actual flow is less than 0.001MGD then use 0.001MGD in the following equation:

$$\text{DSW flow factor} = (0.25 \times \text{Log(flow)}) + 1$$

(h) The receiving water factor shall be determined pursuant to the following table:

Receiving water category[2]	Receiving water factor		
	C1	C2	Other
Surface Water			
FW1			2.5
FW2, TP	2.0		
FW2, TM	2.0	1.5	
FW2, NT	1.5	1.0	
PL			2.25
SC	1.5	1.0	
SE1	2.0	1.5	
SE2	1.5	1.0	
SE3	1.0	0.5	

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Delaware River			
Zone 1		**1.5**	
Zone 2		**1.5**	
Zone 3		**1.0**	
Zone 4		**1.0**	
Zone 5		**1.0**	
Zone 6	**1.5**		
Indirect Discharge			**1.0**

[2]The receiving water classifications in this table are based on definitions of surface water classifications in N.J.A.C. 7:9-4, ground water classifications in N.J.A.C. 7:9-6, and indirect discharge in N.J.A.C. 7:14A-1.9.

7:14-[8.12]**8.13** Civil administrative penalty for economic benefit

[The Department may] **(a) When the Department determines that the violator has gained an economic benefit from a violation, the Department shall**, in addition to any other civil administrative penalty assessed pursuant to this subchapter, include **as part of** a civil administrative penalty the economic benefit (in dollars) which the violator has realized as a result of not complying, or by delaying compliance, with the requirements of the Water Pollution Control Act, the New Jersey Underground Storage of Hazardous Substances Act or any rule, water quality standard, effluent limitation, administrative order or permit issued pursuant thereto. [If the total economic benefit was derived from more than one violation, the total economic benefit amount may be apportioned among the violations from which it was derived so as to increase each civil administrative penalty assessment to an amount no greater than $50,000 per violation.]

(b) Economic benefit shall include:

1. The amount of savings realized from avoided capital or noncapital costs resulting from the violation;

2. The return earned or that may be earned on the amount of the avoided costs;

3. Any benefits accruing to the violator as a result of a competitive market advantage enjoyed by reason of the violation; and

4. Any other benefits resulting from the violation.

(c) The Department shall consider the following factors in determining economic benefit:

1. The amount of capital investments required, and whether they are one-time or recurring;

2. The amount of one-time nondepreciable expenditures;

3. The amount of annual expenses;

4. The useful life of capital;

5. Applicable tax, inflation and discount rates;

6. The amount of low interest financing, the low interest rate, and the corporate debt rate; and

7. Any other factors relevant to economic benefit.

(d) If the total economic benefit was derived from more than one violation, the total economic benefit amount may be apportioned among the violations from which it was derived so as to increase each civil administrative penalty assessment to an amount no greater than $50,000 per violation.

7:14-8.14 Civil administrative penalty for failing to comply with an information request or administrative subpoena, and the destruction of records

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who fails to completely respond to an information request or administrative subpoena, or destroys records relating to a discharge or potential discharge to surface water within five years of the discharge, or to a discharge or potential discharge to ground water at any time without the prior written permission of the Department.

(b) Each day that the violator does not fully respond to any item in an information request or administrative subpoena and each item in an information request or administrative subpoena that is not fully responded to shall be an additional, separate and distinct violation.

(c) The Department shall assess a civil administrative penalty for each failure to completely respond to an information request or administrative subpoena in an amount up to $50,000 based on the following factors:

1. The substantive responsiveness of the violator's response to the information request or administrative subpoena;

2. Number of items in the information request or administrative subpoena which the violator attempted to respond to;

3. Number of items in the information request or administrative subpoena which the violator did not respond to;

4. The timeliness of the violator's response; and

5. Any other relevant factors.

(d) The Department shall assess a civil administrative penalty for the destruction of records in violation of P.L. 1990, c. 28, section 15, based on the conduct of the violator at the midpoint of the following ranges:

1. For each intentional, deliberate, purposeful, knowing or willful act or omission by the violator, the civil administrative penalty shall be in an amount up to $50,000; and

2. For each other violation not identified pursuant to (d)1 above the civil administrative penalty shall be in the amount up to $30,000.

7:14-[8.13]**8.15** Water Supply **and** Wastewater Operators' Licensing Act and Water Supply Management Act civil administrative penalties

(a) (No change.)

(b) The Department shall consider each violation of each provision of **the Water Supply and Wastewater Operators' Licensing Act and the Water Supply Management Act, or** any rule, license or administrative order **adopted or issued pursuant thereto,** as a separate and distinct violation. Each day during which a violation continues shall constitute an additional, separate and distinct offense subjecting the violator to the penalty schedule set forth in (c) below.

(c) through (e) (No change.)

(f) The Department may, in its discretion, adjust the amount determined pursuant to (c) through (e) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the ranges on the basis of the following factors:

1. The compliance history of the violator;

2. The number, frequency and severity of the violation(s);

3. The measures taken by the violator to mitigate the effects of the current violation or to prevent future violations;

4. The deterrent effect of the penalty;

5. The cooperation of the violator in correcting the violation, remedying any environmental damage caused by the violation and ensuring that the violation does not reoccur; and

6. Any unusual or extraordinary costs directly or indirectly imposed on the public by the violation.

7:14-[8.14]**8.16** (No change in text.)

APPENDIX D
WORDING OF FINANCIAL ASSURANCE DOCUMENTS

LETTER OF CREDIT

A letter of credit required by N.J.A.C. 7:14-8.4(a) shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Irrevocable Letter of Credit

New Jersey Department of Environmental Protection
CN 029
Trenton, New Jersey 08625

ATTN: Assistant Director, Enforcement
Division of Water Resources

RE: [Name of Violator]
Adjudicatory Hearing Request

Dear Sir or Madam:

We hereby establish our irrevocable standby Letter of Credit No. _____ in the favor of the New Jersey Department of Environmental Protection, at the request and for the account of [violator's name and address of facility at which violation occurred] up to the aggregate amount of [in words] U.S. dollars _____, available upon presentation by the New Jersey Department of Environmental Protection of (1) a sight draft, bearing reference to this irrevocable standby Letter of Credit No. _____, and (2) a signed statement reading as follows:

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"I certify that the amount of the draft is payable pursuant to the authority of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

This Letter of Credit is effective as of [insert month, day, and year] and shall expire on [date at least 1 year later], but such expiration date shall be automatically extended for a period of at least one (1) year on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both NJDEP's Assistant Director for Enforcement, Division of Water Resources, CN-029, Trenton, New Jersey, 08625, and [name and address of violator] by certified mail that we have decided not to extend this Letter of Credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both NJDEP and [name and address of violator], as shown on the signed return receipts.

Whenever this Letter of Credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [name of violator] or in accordance with your instructions.

We certify that the wording of this Letter of Credit is identical to the wording specified in N.J.A.C. 7:14-8 Appendix A, as such regulations were constituted on [the date shown immediately below].

[Name of issuing institution] shall not cancel this Letter of Credit on the basis of a request from [name violator] until [name of issuing institution] has received written authorization from NJDEP.

This irrevocable standby Letter of Credit is subject to [insert either "the most recent edition of the 'Uniform Customs and Practice for Documentary Credits,' published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

This letter of credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any other document, instrument or agreement referred to herein, except for the sight draft and your signed statement referred to herein. Any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except for such sight draft and signed statement.

Very truly yours,

[Name of Issuing Institution]
[Signature and Title of Official]
[Printed Name of Official]
[Date]

SURETY BOND

A surety bond guaranteeing payment into a trust fund required by N.J.A.C. 7:14-8.4(a) shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Financial Guarantee Bond

RE: ADJUDICATORY HEARING REQUEST
NAME OF VIOLATOR _____
ADDRESS OF FACILITY AT WHICH VIOLATION OCCURRED _____

Date bond executed: _____

Effective date: _____

Principal: [Legal name and business address of violator]

Type of organization [insert "individual", "joint venture", "partnership", or "corporation"]

State of incorporation: _____

[Insert name of violator, location of facility at which the violation occurred, including street address, lot and block number, municipality and county, and the financial assurance guaranteed by this bond]

Total penal sum of bond: _____

Surety bond number: _____

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the New Jersey Department of Environmental Protection, hereinafter NJDEP, in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, the Principal is required to provide financial assurance in an amount equal to the amount of the civil administrative penalty in the Notice of Civil Administrative Penalty Assessment dated [date] as a precondition to requesting an adjudicatory hearing on the Notice of Civil Administrative Penalty Assessment pursuant to N.J.A.C. 7:14-8.4(a), and

WHEREAS, the Principal shall establish a standby trust fund as is required by N.J.A.C. 7:14-8(a)9. when a surety bond is used to provide a mechanism for access by NJDEP to assure payment of the civil administrative penalty in the Notice of Civil Administrative Penalty Assessment dated [date];

NOW, THEREFORE, the conditions of this obligation are such that if the Principal pays the full amount of the civil administrative penalty that is due and owing pursuant to the Notice of Civil Administrative Penalty Assessment, then this obligation shall be null and void, otherwise, it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to pay the civil administrative penalty when due and owing. Upon notification by the NJDEP that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the violator into the standby trust fund as directed by the NJDEP.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of the penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the NJDEP Assistant Director for Enforcement, Division of Water Resources, CN-029, Trenton, N.J., 08625; provided, however, the cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the NJDEP, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies); provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the NJDEP.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth below.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording required in N.J.A.C. 7:14-8 Appendix A as constituted on the date the bond was established.

Principal _____

[Signature(s)] _____

Date _____

[Name(s)] _____

[Title(s)] _____

[Corporate seal] _____

[Name and address] _____

State of incorporation: _____

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Liability limit: _____

[Signature(s)] _____

Date _____

[Name(s) and title(s)] _____

[Corporate seal] _____

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: _____

STANDBY TRUST AGREEMENT

A Standby Trust Agreement required by N.J.A.C. 7:14-8.4(a) shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Standby Trust Agreement

RE: ADJUDICATORY HEARING REQUEST
NOTICE OF CIVIL ADMINISTRATIVE PENALTY ASSESSMENT DATED [date] _____
NAME OF VIOLATOR _____
ADDRESS OF FACILITY AT WHICH VIOLATION OCCURRED _____

This Standby Trust Agreement, hereinafter "Agreement", entered into as of [date] by and between [name and address of the violator], a New Jersey [insert "corporation", "partnership", "association", or "proprietorship"], hereinafter "Grantor" and [name and address of corporate trustee], [insert "incorporated in the State of _____" or "a national bank"], hereinafter "Trustee".

WHEREAS, the Grantor is required to provide financial assurance in an amount equal to the amount of the civil administrative penalty in the Notice of Civil Administrative Penalty Assessment dated [date] as a precondition to requesting an adjudicatory hearing on the Notice of Civil Administrative Penalty Assessment pursuant to N.J.A.C. 7:14-8.4(a), and

WHEREAS, The Grantor, acting through its duly authorized officer or management official, has selected the Trustee under this Agreement, and the Trustee is willing to act as Trustee.

NOW, THEREFORE, the Grantor and the Trustee agree as follow:

Section 1. Definitions

As used in this Agreement:

(a) The term "Grantor" means the violator who is requesting an adjudicatory hearing on the Notice of Civil Administrative Penalty Assessment referenced above, and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into the Agreement and any successor Trustee.

Section 2. Identification of Site or Facility at which the Violation(s) referenced in the Notice of Civil Administrative Penalty Assessment Occurred and Amount of Financial Assurance

This Agreement pertains to the site or facility at which the violation(s) referenced in the Notice of Civil Administrative Penalty Assessment occurred and the full amount of the civil administrative penalty in the Notice of Civil Administrative Penalty Assessment dated [date] which is included herein as Attachment A.

Section 3. Establishment of Fund

The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund", for the benefit of NJDEP. The Grantor and the Trustee intend that no third party shall have access to the fund except as herein provided. The Fund is established initially as consisting of the total sum of [dollar amount] which is acceptable to the Trustee and NJDEP. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the NJDEP.

Section 4. Payment for The Civil Administrative Penalty in the Notice of Civil Administrative Penalty Assessment dated [date]

The Trustee shall make payment from the Fund as the NJDEP Commissioner, or his designee, shall direct, in writing, to provide for the payment of the civil administrative penalty in the Notice of Civil Administrative Penalty Assessment dated [date]. In addition, the Trustee shall refund to the Grantor such amounts the NJDEP specifies in writing. Upon refund such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund

Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management

At such time as the corpus of the Fund is funded with more than one dollar, the Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee shall discharge his duties with respect to the Fund solely in the interest of the NJDEP as the beneficiary and with the care, skill, prudence and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the site or facility at which the violation(s) occurred or any of their affiliates, as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a state government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or state government; and

(iii) The Trustee is authorized to hold cash awaiting investment of distribution univested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expedience of any such sale or other disposition;

(b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary

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capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the Federal Government of the United States or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses

All taxes of any kind that may be assessed or levied against or in respect of the fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor and all other proper charges and disbursements of the Trustee, shall be paid from the Fund.

Section 10. Annual Valuation

The Trustee shall, annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the NJDEP a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the NJDEP shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel

The Trustee may, from time to time, consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to the taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation

The Trustee shall be entitled to reasonable compensation, from time to time, for its services, as agreed upon in writing with the Grantor.

Section 13. Successor Trustee

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer and pay over to the successor Trustee the funds and properties constituting the Fund. If for any reason, the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor, the NJDEP and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Successor Grantor

Sixty days prior to the Grantor ceasing to exist, if dissolution is contemplated, the Grantor must notify and provide NJDEP with the names and addresses of any and all successors and assigns along with a notarized acknowledgement from same stating that the successors and assigns assume responsibilities concerning financial assurance.

Section 15. Instructions to the Trustee

All orders, requests and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in Attachment B or such other designees as the Grantor may designate by amendment to Attachment B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests and instructions by the NJDEP to the Trustee shall be in writing, signed by the NJDEP Commissioner or his/her designee and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor of NJDEP hereunder has occurred.

The Trustee shall have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or NJDEP, except as provided for herein.

Section 16. Amendment of Agreement

This agreement may be amended by an instrument in writing executed jointly by the Grantor or the Grantor's principals, successors, and assigns if Grantor has dissolved, the Trustee and the NJDEP or by the Trustee and the NJDEP if the Grantor ceases to exist and no successors or assigns are named.

Section 17. Irrevocability and Termination

Subject to the right of the parties to amend this Agreement, as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee and the NJDEP or of the Trustee and the NJDEP, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust or in carrying out any directions by the Grantor or the NJDEP issued in accordance with the Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law

This Agreement shall be administered, construed, and enforced according to the laws of the State of New Jersey.

Section 20. Interpretation

As used in this Agreement, words in the singular include the plural and words in the plural include the singular.

The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof, the parties have caused this Agreement to be executed by their respective officer or management officials, duly authorized, and their corporate seals to be hereunto affixed and attested, as of the date set forth below:

[NAME OF GRANTOR]

DATE: _____ By: _____

TITLE: _____

[NAME OF TRUSTEE]

DATE: _____ BY: _____

TITLE: _____

[Grantor shall attach Attachments A and B.]

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FULLY FUNDED TRUST

A fully funded trust required by N.J.A.C. 7:14-8.4(a) shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Trust Agreement

RE: ADJUDICATORY HEARING REQUEST
NOTICE OF CIVIL ADMINISTRATIVE PENALTY ASSESSMENT DATED [date] _____
NAME OF VIOLATOR _____
ADDRESS OF FACILITY AT WHICH VIOLATION OCCURRED _____

This Fully Funded Trust, hereinafter "Agreement", entered into as of [date] by and between [name and address of the violator], a New Jersey [insert "corporation", "partnership", "association", or "proprietorship"], hereinafter "Grantor" and [name and address of corporate trustee], [insert "incorporated in the State of " or "a national bank"], hereinafter "Trustee".

WHEREAS, the Grantor is required to provide financial assurance in an amount equal to the amount of the civil administrative penalty in the Notice of Civil Administrative Penalty Assessment dated [date] as a precondition to requesting an adjudicatory hearing on the Notice of Civil Administrative Penalty Assessment pursuant to N.J.A.C. 7:14-8.4(a), and

WHEREAS, The Grantor, acting through its duly authorized officer or management official, has selected the Trustee under this Agreement, and the Trustee is willing to act as Trustee.

NOW, THEREFORE, the Grantor and the Trustee agree as follow:

Section 1. Definitions

As used in this Agreement:

(a) The term "Grantor" means the violator who is requesting an adjudicatory hearing on the Notice of Civil Administrative Penalty Assessment referenced above, and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into the Agreement and any successor Trustee.

Section 2. Identification of Site or Facility at which the Violation(s) referenced in the Notice of Civil Administrative Penalty Assessment Occurred and Amount of Financial Assurance

This Agreement pertains to the site or facility at which the violation(s) referenced in the Notice of Civil Administrative Penalty Assessment occurred and the full amount of the civil administrative penalty in the Notice of Civil Administrative Penalty Assessment dated [date] which is included herein as Attachment A.

Section 3. Establishment of Fund

The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund", for the benefit of NJDEP. The Grantor and the Trustee intend that no third party shall have access to the fund except as herein provided. The Fund is established initially as consisting of the total sum of [dollar amount] which is acceptable to the Trustee and NJDEP. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the NJDEP.

Section 4. Payment for The Civil Administrative Penalty in the Notice of Civil Administrative Penalty Assessment dated [date]

The Trustee shall make payment from the Fund as the NJDEP Commissioner, or his designee, shall direct, in writing, to provide for the payment for the civil administrative penalty in the Notice of Civil Administrative Penalty Assessment dated [date]. In addition, the Trustee shall refund to the Grantor such amounts the NJDEP specifies in writing. Upon refund such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund

Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management

At such time as the corpus of the Fund is funded, the Trustee shall invest and reinvest principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee shall discharge his duties with respect to the Fund solely in the interest of the NJDEP as the beneficiary and with the care, skill, prudence and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the site or facility at which the violation(s) occurred or any of their affiliates, as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a state government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment of distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expedience of any such sale or other disposition;

(b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the Federal Government of the United States or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with

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the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses

All taxes of any kind that may be assessed or levied against or in respect of the fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor and all other proper charges and disbursements of the Trustee, shall be paid from the Fund.

Section 10. Annual Valuation

The Trustee shall, annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the NJDEP a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the NJDEP shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel

The Trustee may, from time to time, consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation

The Trustee shall be entitled to reasonable compensation, from time to time, for its services, as agreed upon in writing with the Grantor.

Section 13. Successor Trustee

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer and pay over to the successor Trustee the funds and properties constituting the Fund. If for any reason, the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee or for instructions. The successor trustee shall specify the date on which it assumes admnistration of the trust in writing sent to the Grantor, the NJDEP and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Successor Grantor

Sixty days prior to the Grantor ceasing to exist, if dissolution is contemplated, the Grantor must notify and provide NJDEP with the names and addresses of any and all successors and assigns along with a notarized acknowledgment from same stating that the successors and assigns assume responsibilities concerning financial assurance.

Section 15. Instructions to the Trustee

All orders, requests and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in Attachment B or such other designees as the Grantor may designate by amendment to Attachment B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests and instructions by the NJDEP to the Trustee shall be in writing, signed by the NJDEP Commissioner or his/her disignee and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or NJDEP hereunder has occurred.

The Trustee shall have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or NJDEP, except as provided for herein.

Section 16. Amendment of Agreement

This agreement may be amended by an instrument in writing executed jointly by the Grantor or the Grantor's principals, successors, and assigns if Grantor has dissolved, the Trustee and the NJDEP or by the Trustee and the NJDEP if the Grantor ceases to exist and no successors or assigns are named.

Section 17. Irrevocability and Termination

Subject to the right of the parties to amend this Agreement, as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee and the NJDEP or of the Trustee and the NJDEP, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust or in carrying out any directions by the Grantor or the NJDEP issued in accordance with the Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonable incurred in its defense in the event that the Grantor fails to provide such defense.

Section 19. Choice of Law

This Agreement shall be administered, construed and enforced according to the laws of the State of New Jersey.

Section 20. Interpretation

As used in this Agreement, words in the singular include the plural and words in the plural include the singular.

The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof, the parties have caused this Agreement to be executed by their respective officer or management officials, duly authorized, and their corporate seals to be hereunto affixed and attested, as of the date set forth below:

[NAME OF GRANTOR]

DATE: _____ BY: _____

TITLE: _____

[NAME OF TRUSTEE]

DATE: _____ BY: _____

TITLE: _____

[Grantor shall attach Attachments A and B.]

CERTIFICATION OF ACKNOWLEDGMENT

A certification of acknowledgment required by N.J.A.C. 7:14-8.4(a) shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

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CERTIFICATION OF ACKNOWLEDGMENT
(Grantor & Trustee)

ADJUDICATORY HEARING REQUEST
NOTICE OF CIVIL ADMINISTRATIVE ASSESSMENT DATED [date]

NAME OF VIOLATOR _____

ADDRESS OF VIOLATOR _____

ADDRESS OF SITE OR FACILITY AT WHICH VIOLATION OCCURRED _____

Amount of Financial Guarantee $ _____

Type of Financial Assurance Posted _____

State of _____

County of _____

On this [date], before me personally came [name of the violator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of the corporation; that the seal affixed to such instruments is such corporate seal; that is so affixed by order of the Board of Directors of the corporation, and that she/he signed her/his name thereto by like other.

[Signature of Notary Public]

7:14A-1.9 Definitions

As used in this chapter, the following words and terms shall have the following meanings.

. . .

"Bypass" means the **anticipated or unanticipated** intentional diversion of [wastes] **waste streams** from any portion of a treatment [facility] **works**.

. . .

"Delegated local agency" means a local agency with an industrial pretreatment program approved by the Department.

. . .

"Discharge" means **an intentional or unintentional action or omission resulting in** the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of a pollutant into the waters of the State, onto land or into wells from which the [it] **pollutant** might flow or drain into [the] **such** waters, **or into waters or onto lands outside the jurisdiction of the State which pollutant enters the waters of the State**, and shall include the release of any pollutant into a municipal treatment works.

. . .

"Discharge Monitoring Report" or "DMR" means the EPA uniform national form, including any subsequent additions, revisions [or], modifications **and replacements**, for the reporting of self-monitoring results by permittees, **and includes Baseline Monitoring Reports and BMRs.**

. . .

"Effluent limitation" means any restriction on quantities, quality, discharge rates[,] **and** concentration of chemical, physical, thermal, biological, and other constituents of [a pollutant] **pollutants established by permit, or imposed as an interim enforcement limit pursuant to an administrative order, including an administrative consent order**.

. . .

"Hazardous pollutant" means:

1. Any toxic pollutants identified pursuant to Section 307 of the Federal Act or Section 4 of the State Act and those pollutants, or combinations of pollutants, including disease causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly or indirectly by ingestion through food chains, may on the basis of information available to the Department, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformation, in such organisms or their offspring;

2. Any hazardous substance designated under 40 CFR Part 116 pursuant to Section 311 of the Federal Act, the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., or Section 4 of the State Act:

3. Any substance regulated as a pesticide under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §135 et seq.;

4. Any substance the use or manufacture of which has been prohibited under the Federal Toxic Substances Control Act, 15 U.S.C. §2601 et seq.;

5. Any substance listed as a known carcinogen by the International Agency for Research on Cancer; and

6. Any solid waste that is defined or identified as a hazardous waste pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., in N.J.A.C. 7:26-8 or pursuant to 40 CFR Part 261.

. . .

"Hazardous waste" means [a hazardous waste as defined in the "Hazardous Waste Management Regulations," N.J.A.C. 7:26-6 or at a minimum as defined in 40 CFR Part 261] **any solid waste that is defined or identified as a hazardous waste pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. in N.J.A.C. 7:26-8 or pursuant to 40 CFR Part 261.**

. . .

"LC50" means the median lethal concentration of a toxic substance, including an effluent, expressed as a statistical estimate of the concentration that is lethal to 50 percent of the test organisms under specified test conditions, based on the results of an acute toxicity test. For purposes of this subchapter, it includes an EC50, the median effective concentration, based on daphnid immobilization.

. . .

"Local agency" means a political subdivision of the State, or an agency or instrumentality thereof, that owns or operates a municipal treatment works.

"Major facility" means any facility or activity classified as such by the [Regional] Administrator **of the United States Environmental Protection Agency, or his or her representative, in conjunction with** [or] the Department, **and includes industrial facilities and municipal treatment works**.

. . .

"Monitoring report form" means the [DEP] standard **Department** form, including any subsequent additions, revisions or modifications, for the reporting of self-monitoring results by permittees **pursuant to certain DGW permits**.

. . .

"NOEC" or "no observable effect concentration" means the highest concentration of a toxic substance, including an effluent, that has no adverse effect on survival, growth or reproduction of test organisms based upon the results of chronic toxicity testing.

. . .

"Permit" means an authorization, license, or equivalent control document issued by the Department to implement the requirements of this chapter even where any or all of the conditions of the permit have been stayed. Permit does not include any permit which requires EPA review pursuant to 40 CFR Part 123.75, such as a "draft permit" or a "proposed permit." **Permit includes a letter of agreement entered into between a delegated local agency and a user of its municipal treatment works, setting effluent limitations and other conditions on the user of the agency's municipal treatment works.**

. . .

"Schedule of compliance" **or "compliance schedule"** means a schedule of remedial measures [included in a "permit",] including an enforceable sequence of [interim requirements (for example, actions operation or milestone events)] actions or operations leading to compliance with [the "appropriate Act and regulations"] **water quality standards, an effluent limitation or other limitation, prohibition or standard**.

. . .

"Serious violation" means an exceedance, at any discharge point source, of an effluent limitation, except color, unless the department uses, on a case-by-case basis, a more stringent factor of exceedance to determine a serious violation and states the specific reasons therefore, which may include the potential for harm to human health or the environment, as follows:

1. For effluent limitations for pollutants that are measured by concentration or mass, except for whole effluent toxicity;

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i. Violations of an effluent limitation that is expressed as a monthly average;

(1) By 20 percent or more for a hazardous pollutant; and

(2) By 40 percent or more for a nonhazardous pollutant;

ii. Violations of an effluent limitation that is expressed as a daily maximum or daily minimum without a monthly average;

(1) By 20 percent or more of the average of all of the daily maximum or minimum values for hazardous pollutant; and

(2) By 40 percent or more of the average of all of the daily maximum or minimum values for a nonhazardous pollutant;

2. For effluent limitations for whole effluent toxicity and pollutants that are not measured by concentration or mass as follows:

i. Any violation of an effluent limitation for pH of at least two but less than three standard units outside the range of the pH effluent limitation; and

ii. For any violation of an LC50 or a NOEC limit when, upon subtracting the toxicity test result from the whole effluent toxicity limit, the difference is as follows:

Whole Effluent Toxicity Limit (% Effluent)	Difference (% Effluent)
greater than or equal to 80 and less than or equal to 100	greater than or equal to 20
greater than or equal to 50 and less than 80	greater than or equal to 15
greater than 10 and less than 50	greater than or equal to 10
less than or equal to 10	greater than or equal to 9

iii. For any violation of whole effluent toxicity limitations expressed as No Measurable Acute Toxicity (NMAT) with greater than or equal to 50 percent mortality in any test concentration, including 100 percent effluent; and

. . .

"Significant noncomplier" or "SNC" means any person, except a local agency for an exceedance of an effluent limitation for flow, who commits any of the violations described below, unless the Department uses, on a case-by-case basis, a more stringent frequency or factor of exceedance to determine a significant noncomplier and the Department states the specific reasons therefor, which may include the potential for harm to human health or the environment. Violations which cause a person to become or remain an SNC include:

1. A serious violation for the same pollutant, at the same discharge point source, in any two months of any consecutive six month period;

2. Exceedance of an effluent limitation expressed as a monthly average, for the same pollutant, at the same discharge point source, by any amount in any four months of any consecutive six month period;

3. If there is not an effluent limitation for a particular pollutant expressed as a monthly average, exceedance of the monthly average of the daily maximums for the effluent limitation, for the same pollutant, at the same discharge point source, by any amount in any four months of any consecutive six month period; or

4. Failure to submit a completed discharge monitoring report in any two months of any consecutive six month period.

. . .

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with [technology based permit] **an** effluent limitation because of [factors] **an event** beyond the reasonable control of the permittee, **including fire, riot, sabotage, or a flood, storm event, natural cause, or other act of God, or other similar circumstance, which is the cause of the violation. "Upset" also includes noncompliance consequent to the performance of maintenance operations for which a prior exception has been granted by the Department or a delegated local agency.** An upset does not include noncompliance to the extent caused by operational error, improperly designed facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

7:14A-2.5 Conditions applicable to all permits

(a) Permittees shall comply with all of the following:

1. through 11. (No change.)

12. The permittee shall provide for monitoring, **reporting** and records as follows:

i. through viii. (No change.)

ix. All permittees with effluent limits expressed as daily maximums or minimums without a monthly average for that particular parameter shall also report, in addition to all other applicable reporting requirements, the average of all daily maximum or minimum values obtained during the reporting month. The Department will use this average of all daily maximum or minimum values to determine whether or not a violation of a daily maximum or minimum is a serious violation. The violation of a daily maximum or minimum shall be a serious violation if the average of all daily maximum or minimum values reported varies from the effluent limit as follows:

(1) By 20 percent or more for a hazardous pollutant; and

(2) By 40 percent or more for a nonhazardous pollutant.

x. All permittees with a point source discharge required to submit discharge monitoring reports to the Department shall submit the required reporting forms to the Department on a monthly basis for all those paramerers that are required to be monitored during that particular month.

xi. Any permittee who either reports effluent values that would make the permittee a serious violator or otherwise becomes a serious violator for one or more specific parameters for which the permittee is required to monitor and report less frequently than monthly shall automatically adjust its monitoring and reporting frequency for the parameter at that discharge point to monthly, beginning the first month after the month in which the permittee was required to submit the discharge monitoring report to the Department which results in the permittee becoming a serious violator, whether or not the permittee has raised or intends to raise any affirmative defense to, or otherwise contest, any of the violations that would otherwise make the permittee a serious violator. The permittee shall continue this monthly schedule until the permittee has submitted six consecutive monthly discharge monitoring reports which show compliance with the particular parameter at the particular discharge point, at which time the permittee may resume the original schedule in its permit.

13.-15. (No change.)

7:14A-3.10 Additional conditions concerning **reporting requirements** applicable to all DSW permits

[(a) The following shall be reported to the Department in accordance with N.J.A.C. 7:14A-2.5(a)12vi:

1. In the case of any discharge subject to any applicable toxic pollutant effluent standard under Section 307(a) of the Federal Act or under Section 6 of the State Act the information required by N.J.A.C. 7:14A-2.5(a)12vi(1)(A) through (C) regarding a violation of such standard shall be provided to the Department within two hours from the time the permittee becomes aware of the circumstances. The information required by N.J.A.C. 7:14A-2.5(a)2vi(1)(D) through (F) shall be provided to the Department within 24 hours from the time the permittee becomes aware of the circumstances. Where the information is provided orally a written submission covering these points must be provided within five working days of the time the permittee becomes aware of the circumstances covered by this paragraph.

2. In the case of other discharges which could constitute a threat to human health, welfare, or the environment, including but not limited to, discharge of pollutants designated under Section 311 of the Federal Act, under Section 6 of the State Act, under the "Spill Compensation and Control Act", N.J.S.A. 58:11-23.10 et seq., or under the "Safe Drinking Water Act", N.J.S.A. 58:12A-1 et seq., the information required by N.J.A.C. 7:14A-2.5(a)12vi(a)(A) through (C) shall be provided within two hours from the time the permittee becomes aware of the circumstances. The information required by N.J.A.C. 7:14A-2.5(a)12vi(1)(D) through (F) shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. Where the information is provided orally a written submission covering these points must be provided within five working days of the time the permittee becomes aware of the circumstances covered by this paragraph.

3. The information required by N.J.A.C. 7:14A-2.5(a)12vi(1)(A) through (C) shall be provided to the Department within two hours where a discharge described under (a)1i or (a)1ii above is located

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upstream of a potable water intake or well field. The information required by N.J.A.C. 7:14A-2.5(a)2vi(1)(D) through (F) shall be provided to the Department within 24 hours. If this information is provided orally a written submission covering these points must be provided within five days of the time the permittee becomes aware of the discharge.

4. Any bypass which violates any effluent limitation in the permit shall be reported within 24 hours unless (a)1 through 3 above are applicable. (See N.J.A.C 7:14A-3.10(b)).

5. Any upset which violates any effluent limitation in the permit shall be reported within 24 hours unless (a)1 through 3 above are applicable. (See N.J.A.C 7:14A-3.10(b)).

6. Violation of a maximum daily discharge limitation for any of the pollutants listed by the Department in the permit shall be reported within 24 hours unless (a)1 through 3 above are applicable. (See N.J.A.C. 7:14A-3.13(g)).

(b) Bypass requirements are as follows:

1. Bypass not exceeding limitations: The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of (b)2 and (b)3 below.

2. Notice requirements are as follows:

i. Approved anticipated bypass: If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible, at least 30 days before the date of the bypass.

ii. Unanticipated bypass: The permittee shall submit notice of an unanticipated bypass as required in (a)5 above.

3. Bypass prohibition is as follows:

i. Bypass is prohibited, and the Department may take enforcement action against a permittee for bypass, unless

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if the permittee could have installed adequate backup equipment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under (b)2 above.

ii. The Department may approve an approved anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three conditions listed above in (b)3i above.

(c) The following related to an upset:

1. Effect of an upset: An upset may constitute an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of (c)2 below are met. Where no determination was made during administrative review of claims that noncompliance was caused by upset, and there has been no Departmental action for noncompliance, the lack of such determination is final administrative action subject to judicial review.

2. Conditions necessary for a demonstration of upset: A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed contemporaneous operating logs, or other relevant evidence that:

i. An upset occurred and that the permittee can identify the specific cause(s) of the upset;

ii. The permitted facility was at the time being properly operated; and

iii. The permittee submitted notice of the upset as required in (a) above;

iv. The permittee complied with any remedial measures required under N.J.A.C. 7:14A-2.5(a)4.

3. Burden of proof: In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.]

(a) All permittees, including all owners and operators which are required to obtain a treatment works approval, shall comply with the reporting requirements in this section.

(b) All permittees shall comply with the reporting requirements of (c) below for any of the following:

1. Any discharge that causes injury to persons, or damage to the environment;

2. Any discharge which could constitute a threat to human health or the environment;

3. Any discharge in violation of an effluent limitation for a toxic pollutant;

4. Any discharge in violation of the effluent limitation upstream of a potable water intake or well field; and

5. Any unpermitted discharge not otherwise identified in (b)1 through 4 above.

(c) Any permittee discharging polluants as identified in (b) above shall comply with the reporting requirements in this subsection.

1. The permittee shall, within two hours after the commencement of the discharge or of the permittee becoming aware of the discharge, verbally communicate the following information to the Department via the DEP Hotline at (609) 292-7172:

i. A description of the discharge, including the time of the discharge, the location of discharge, the volume of the discharge, the concentration of pollutants discharged, and the receiving water of the discharge;

ii. Steps the permittee will take to determine the cause of the permit noncompliance; and

iii. Steps the permittee will take to reduce and eliminate the noncomplying discharge;

2. The permittee shall, within 24 hours after the cessation of the discharge, verbally communicate the following information to the Department via the DEP Hotline at (609) 292-7172:

i. The duration of the discharge, including the exact dates and times, and if the noncompliance has not been corrected, the anticipated time when the permittee will return the discharge to compliance;

ii. The cause of the noncompliance;

iii. Steps the permittee is taking to reduce, eliminate, and prevent reoccurrence of the noncomplying discharge;

iv. An estimate of the threat to human health or the environment posed by the discharge;

v. The measures the permittee has taken or is taking to remediate the problem and any damage or injury to human health or the environment, and to avoid a repetition of the problem; and

vi. Any revisions to the information required by (c)1 above.

3. The permittee shall, within five days after the cessation of the discharge, submit in writing to the person identified in (c)4 below all of the information required in (c)1 and 2 above if the permittee had not previously submitted the information in writing to the Department. The Department must receive the information required by (c)1 and 2 above within the five-day period in order for the violator to meet this requirement. If the permittee becomes aware that it has failed to submit any relevant facts required in (c)1 or 2 above, or submitted incorrect information required in (c)1 or 2 above, the permittee shall immediately submit such facts or information to the Department.

4. The permittee shall submit the written notice required pursuant to (c)3 above to:

Assistant Director of Enforcement
Division of Water Resources
New Jersey Department of Environmental Protection
401 East State Street
CN 029
Trenton, New Jersey 08625

(d) Any permittee who discharges any pollutant in violation of its maximum daily discharge limitation not otherwise covered in (b) above shall, within 24 hours after the commencement of the discharge, verbally communicate the violation to the Department via the DEP Hotline at (609) 292-7172.

(e) A permittee shall not allow an anticipated bypass to occur unless the permittee demonstrates, to the satisfaction of the Department, that:

1. The anticipated bypass is unavoidable to prevent loss of life, personal injury, or severe property damage;

2. There were no feasible alternatives to the anticipated bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime;

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3. The anticipated bypass will not occur during normal periods of equipment downtime or preventive maintenance when back-up equipment can be installed to avoid the anticipated bypass;

4. The permittee compiled with the reporting requirements in (f) below; and

5. The permittee received the Department's written prior approval for the anticipated bypass.

(f) All permittees shall comply with the reporting requirements for anticipated bypasses in this subsection.

1. The permittee shall, within 30 days if possible, but in no case less than 10 days prior to the date of the anticipated bypass, provide prior written notice of the anticipated bypass to the Department, including:

i. The exact dates and times of the anticipated commencement and end of the anticipated bypass;

ii. The permittee's rationale as to why the anticipated bypass has to occur;

iii. That the permittee will be properly operating the facility at the time of the anticipated bypass;

iv. That the anticipated bypass is unavoidable to prevent loss of life, personal injury, or severe property damage, including the name, title, address and telephone number of the individual that made the determination for the permittee, the data and information upon which that individual made the determination and any other information the Department requests;

v. That there is no feasible alternative to the anticipated bypass, including but not limited to the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of downtime; and

vi. That the anticipated bypass will not occur during normal periods of equipment downtime or preventive maintenance when back-up equipment can be installed to avoid the anticipated bypass.

(g) Any permittee who has an unanticipated bypass not otherwise covered in (b) above shall comply with the reporting requirements for unanticipated bypasses in this subsection.

1. The permittee shall, within two hours after the commencement of the discharge or of the permittee becoming aware of the discharge, verbally communicate the following information to the Department via the DEP Hotline at (609) 292-7172.

i. A description of the discharge, including the time of the discharge, the location of discharge, the volume of the discharge, the concentration of pollutants discharged, and the receiving water of the discharge;

ii. Steps the permittee will take to determine the cause of the permit noncompliance; and

iii. Steps the permittee will take to reduce and eliminate the noncomplying discharge.

2. The permittee shall, within 24 hours after the cessation of an unanticipated bypass, verbally communicate the following information to the Department via the DEP Hotline at (609) 292-7172:

i. The duration of the unanticipated bypass, including the exact dates and times of the commencement and end, or anticipated end of the unanticipated bypass, and if the reason for the unanticipated bypass has not been corrected, the anticipated time when the permittee will correct the situation to remove the need for the unanticipated bypass;

ii. A description of the discharge, including the location of discharge, the volume of the discharge, the concentration of pollutants discharged, and the receiving water of the discharge;

iii. The cause of the unanticipated bypass; and

iv. Steps the permittee is taking to reduce, eliminate, and prevent reoccurence of the unanticipated bypass.

3. The permittee shall, within five days after the cessation of the unanticipated bypass, submit written documentation, to the person identified in (g)4 below, including all of the information listed below. The Department must receive the information required by (g)3i through ix below within the five-day period in order for the violator to meet this requirement. If the permittee becomes aware that it has failed to submit any relevant facts required in (g)1 or 2 above, or submitted incorrect information required in (g)1 or 2 above, the permittee shall immediately submit such facts or information to the Department:

i. All of the information required by (g)1 above;

ii. All properly signed, contemporaneous operating logs, or other relevant evidence, on the circumstances of the violation;

iii. The reasons that the unanticipated bypass occurred, including the circumstances leading to the unanticipated bypass;

iv. Evidence that the permittee was properly operating the facility at the time of the bypass;

v. Evidence that the permittee submitted notice of the unanticipated bypass as required pursuant to (g)1 above, including the name, title, address and telephone number of the individual who satisfied this requirement, the date and specific time the individual notified the Department for the permittee, the specific method that the individual used to notify the Department, and the name and title of the individual within the Department to which the permittee gave such notice;

vi. Evidence that the permittee complied with all remedial measures the Department required;

vii. The violator's rationale for and all supporting documentation that the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage, including the name, title, address and telephone number of the individual that made the determination for the permittee, the data and information upon which that individual made the determination and any other information the Department requests;

viii. Evidence that there was no feasible alternative to the unanticipated bypass, including but not limited to the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of downtime; and

ix. Evidence that the unanticipated bypass did not occur during normal periods of equipment downtime or preventive maintenance when back-up equipment should have been installed to avoid the unanticipated bypass.

4. The permittee shall submit the written notice required pursuant to (g)3 above to:

Assistant Director of Enforcement
Division of Water Resources
New Jersey Department of Environmental Protection
401 East State Street
CN 029
Trenton, New Jersey 08625

(h) Any permittee who has an upset not otherwise covered in (b) above shall comply with the reporting requirements for upsets in this subsection.

1. The permittee shall, within two hours after the commencement of the discharge or of the permittee becoming aware of the discharge, verbally communicate the following information to the Department via the DEP Hotline at (609) 292-7172:

i. A description of the discharge, including the time of the discharge, the location of discharge, the volume of the discharge, the concentration of pollutants discharged, and the receiving water of the discharge;

ii. Steps the permittee will take to determine the cause of the permit noncompliance; and

iii. Steps the permittee will take to reduce and eliminate the noncomplying discharge.

2. The permittee shall, within 24 hours after the cessation of an upset, verbally communicate the following information to the Department via the DEP Hotline at (609) 292-7172:

i. The duration of the discharge, including the exact dates and times, and if the reason for the upset has not been corrected, the anticipated time when the permittee will return the discharge to compliance;

ii. A description of the discharge, including the location of discharge, the volume of the discharge, the concentration of pollutants discharged, and the receiving water of the discharge;

iii. The cause of the upset; and

iv. Steps the permittee is taking to reduce, eliminate, and prevent reoccurrence of the upset.

3. The permittee shall, within five days after the cessation of an upset, submit written documentation, to the person identified in (h)4 below, including properly signed, contemporaneous operating logs, or other relevant evidence, on the circumstances of the violation, and including all of the information listed below. The Department must receive the information required by (h)3i through vi below within the five-day period in order for the violator to meet this requirement. If the permittee becomes aware that it has failed to submit any relevant facts required in (h)1 or 2 above, or submitted incorrect information required in (h)1 and 2 above, the permittee shall immediately submit such facts or information to the Department:

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i. All of the information required by (h)1 above;

ii. All properly signed, contemporaneous operating logs, or other relevant evidence, on the circumstances of the violation;

iii. Reasons that the upset occurred, including the cause of the upset and the identity of the person causing the upset; except that, in the case of a treatment works, the local agency may certify that despite a good faith effort it was unable to identify the cause of the upset, or the person causing the upset;

iv. Evidence that the permittee was properly operating the facility at the time of the upset;

v. Evidence that the permittee submitted notice of the upset as required pursuant to (h)1 above, or, in the case of an upset resulting from the performance by the permittee of maintenance operations, the permittee provided prior notice and received prior written approval therefor from the Department, including the name, title, address and telephone number of the individual who satisfied this requirement, the date and specific time the individual notified the Department for the permittee, the specific method that the individual used to notify the Department, and the name and title of the individual within the Department to which the permittee gave such notice; and

vi. Evidence that the permittee complied with all remedial measures the Department required.

3. The permittee shall submit the written notice required pursuant to (h)2 above to:

Assistant Director of Enforcement
Division of Water Resources
New Jersey Department of Environmental Protection
401 East State Street
CN 029
Trenton, New Jersey 08625

7:14A-8.13 [Public participation in the State enforcement process] **(Reserved)**

[(a) The Department shall publish public notice in the DEP Bulletin of all requests for a hearing concerning an administrative enforcement action brought pursuant to Sections 10(b) or (d) of the State Act.

(b) Within 30 days of publication in the DEP Bulletin, any person having an interest which is or may be affected may request in writing to intervene as of right in any administrative enforcement action brought pursuant to Sections 10(b) or (d) of the State Act.]

7:18-6.6 Methodology

(a) through (u) (No change.)

(v) During short term tests, deaths in the controls should be virtually absent. [For all fish, a control mortality of greater than or equal to 10 percent shall invalidate the test. When using grass or opossum shrimp, control mortalities of greater than or equal to 15 percent shall invalidate the test.] **Mortality of the control test organisms greater than 10 percent shall invalidate the test.**

(w) through (ab) (No change.)

(a)

DIVISION OF ENVIRONMENTAL QUALITY

Laboratory Certification and Standards of Performance

Proposed Readoption: N.J.A.C. 7:18

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1D-1 et seq., 58:1A-1 et seq., and 58:12A-1 et seq., specifically 58:10A-4, 58:10A-9, 58:12A-4c(4) and 58:12A-9h.

DEP Docket Number: 015-91-03.

Proposal Number: PRN 1991-202.

Submit written comments by May 15, 1991 to:

Samuel A. Wolfe, Esq.
Administrative Practice Officer
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Environmental Protection ("Department") proposes to readopt N.J.A.C. 7:18 without change. The chapter is scheduled to expire on August 6, 1991 in accordance with Executive Order No. 66(1978).

N.J.A.C. 7:18 contains rules governing the Department's laboratory certification program for drinking water and wastewater. The chapter was adopted in 1981 as part of the Department's efforts to meet the mandates of the New Jersey Safe Drinking Water Act ("SDWA"), N.J.S.A. 58:12A-1 et seq. and the New Jersey Water Pollution Control Act ("WPCA"), N.J.S.A. 58:10A-1 et seq. It provides administrative procedures, certification categories, standards, criteria, and the technical procedures necessary for the certification of laboratories testing drinking water and/or wastewater pursuant to the Department's SDWA program and the New Jersey Pollutant Discharge Elimination System ("NJPDES") program. The proposed readoption of the chapter will enable the Department to continue its laboratory certification program and, as such, will allow the Department to continue to meet the mandates of the WPCA and the SDWA.

The certification provisions of N.J.A.C. 7:18 have resulted in the generation of high quality analytical data for the Department's NJPDES and SDWA programs. Through the required use of the procedures and the quality control methods contained in N.J.A.C. 7:18, the Department has been able to ensure that laboratories testing drinking water and wastewater generate environmental measurement data that is reliable and of consistently good quality. This has provided persons using private and public drinking water supplies and public waterways with an extra measure of protection. N.J.A.C. 7:18, therefore, is a necessary and important part of the Department's commitment to protect the environment and the public health and safety.

In the years since the original adoption of N.J.A.C. 7:18, many new programs have been established in the Department that require the use of additional laboratory services. For example, the Environmental Cleanup Responsibility Act (ECRA), N.J.S.A. 13:1K-1 et seq., the Act concerning radon gas and radon progeny contamination (Radon Act), N.J.S.A. 26:2D-70 et seq., the New Jersey Spill Compensation and Control Act (Spill Act), N.J.S.A. 58:10-23.11 et seq., the Solid Waste Management Act (SWMA), N.J.S.A. 13:1E-1 et seq., and amendments to the WPCA and the SDWA have all placed obligations on the regulated community that require the acquisition of new laboratory services. In order to ensure that the data generated by these additional laboratory services is accurate and reliable, the Department will be required to expand its laboratory certification program. The Department, therefore, is currently developing amendments to N.J.A.C. 7:18 to revise and upgrade these rules to include the new laboratory services required by the additional programs. In this regard, the Department recently proposed rules governing the certification of laboratories performing radon gas analysis (see 23 N.J.R. 29(b), January 7, 1991). The rule proposal includes certification procedures for laboratories testing samples for radon gas and radon progeny, and fees to defray the costs incurred by the Department in certifying these laboratories. The Department expects to adopt the radon laboratory certification rules by June, 1991.

The Department plans to propose additional amendments to N.J.A.C. 7:18 in May, 1991, and adopt these amendments by October, 1991. These additional amendments will include new certification categories for sampling methods; new laboratory standards and procedures; new laboratory criteria; revisions and additions to bioassay standards and procedures; and new enforcement procedures for drinking water and wastewater analyses performed under the auspices of the WPCA and SDWA. These additional amendments also will increase the current fees to cover increased costs incurred in the administration of the current laboratory program and will establish new fees to defray the costs of the expanded program. By January, 1992, the Department also plans to propose amendments to N.J.A.C. 7:18 which are necessary to support Department programs conducted under ECRA, the Spill Act, and the SWMA.

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A summary of the text of N.J.A.C. 7:18 follows:

N.J.A.C. 7:18-1.1, Scope and authority, (1) explains that this chapter establishes the procedures for obtaining and maintaining certifications, and establishes the criteria and procedures that laboratories shall follow in analyzing water samples, and (2) lists the statutes that delegate the appropriate authority to the laboratory certification program.

N.J.A.C. 7:18-1.2, Construction, directs that this chapter be liberally construed to effectuate the purposes of the laboratory certification program.

N.J.A.C. 7:18-1.3, Purpose of the regulations, establishes the rationale for promulgating the chapter.

N.J.A.C. 7:18-1.4, Certification program requirements, states that laboratories wishing to participate in the laboratory certification program shall follow the procedures described in this chapter.

N.J.A.C. 7:18-1.5, Incorporation by reference, adopts and incorporates those analytical methodologies required by the Federal statutes.

N.J.A.C. 7:18-1.6, Program information, designates a point of contact within the Department for all information regarding the laboratory certification program.

N.J.A.C. 7:18-1.7, Definitions, lists key terms and their definitions as they apply to the rules.

N.J.A.C. 7:18-1.8, Severability, provides for the validity of the remainder of this chapter should any portion thereof be adjudged invalid by a court of competent jurisdiction.

N.J.A.C. 7:18-2.1, Requirement of certification, mandates that laboratories which report environmental measurement data to the Department for assessment of compliance with the Safe Drinking Water and Water Pollution Control Acts must be certified by the Department. This section also provides for reciprocal certification of laboratories located in states which maintain an equivalent or more stringent certification program, provided that the laboratory is certified by that state.

N.J.A.C. 7:18-2.2, Categories for certification, outlines the major testing categories for which certification is available.

N.J.A.C. 7:18-2.3, Application procedures for laboratories located in New Jersey, describes the processes for filing applications, submitting fees and personnel qualifications, demonstrating proficiency through analysis of performance evaluation samples, and completing an on-site evaluation of the laboratory facilities by Department inspection personnel.

N.J.A.C. 7:18-2.4, Procedures for laboratories not located in New Jersey, outlines the certification procedures for out-of-State uncertified laboratories, and sets forth the requirements for reciprocity with other state certification programs.

N.J.A.C. 7:18-2.5, Renewal of certification, requires that certified laboratories wishing to remain in the program submit renewal applications and applicable fees to the Department each June.

N.J.A.C. 7:18-2.6, Fees, lists the annual fees required for certification in each of the major categories.

N.J.A.C. 7:18-2.7, Required laboratory personnel policies, describes general requirements for designation of laboratory managers, supervisors, and technical personnel. This section also defines education and experience requirements for laboratory supervisors and technical personnel.

N.J.A.C. 7:18-2.8, Duties and responsibilities of laboratory personnel, defines general responsibilities of laboratory managers and supervisors.

N.J.A.C. 7:18-2.9, Management of laboratories, describes general practices for providing analytical services to clients and for accepting samples.

N.J.A.C. 7:18-2.10, Proficiency testing, outlines requirements and time frames for participation in the program's ongoing performance evaluation process necessary for maintaining or expanding a laboratory's certification.

N.J.A.C. 7:18-2.11, Laboratory inspections, defines the process for on-site evaluations of laboratories.

N.J.A.C. 7:18-2.12, Cancellation, suspension, and revocation of certification, describes the Department's policies for cancellation of certification of the laboratory and the suspension and revocation of a laboratory's certification by the Department in the course of enforcing this chapter.

N.J.A.C. 7:18-2.13, Effect and duration of suspension, notification and revocation orders, states that laboratories are not permitted to report data to the Department when their certification is suspended or revoked. Suspensions shall not be withdrawn until all bases for the suspension have been rectified. Laboratories must reapply for certification after their certification has been revoked. This section also provides for an administrative hearing after a laboratory receives a revocation order from the Department.

N.J.A.C. 7:18-2.14, Information to State, requires that laboratories notify the Department in the event there is any change in the laboratory name, location, post office address, or telephone number.

N.J.A.C. 7:18-3, Criteria and Procedures for Microbiological Testing and Analysis, lists all of the requirements with which a laboratory must be in compliance in order to obtain and maintain microbiological certification. The sections include requirements for laboratory facilities and safety; laboratory equipment, supplies, and materials; sample collection, handling, and preservation; methodologies; general laboratory practices; quality control programs; and records and data reporting.

N.J.A.C. 7:18-4, Criteria and Procedures for Chemical Testing and Analysis, lists all of the requirements with which a laboratory must be in compliance in order to obtain and maintain chemical certification. The sections include requirements for laboratory facilities, and safety; laboratory equipment, supplies, and materials; sample collection, handling, and preservation; methodologies; general laboratory practices; quality control programs; and records and data reporting.

N.J.A.C. 7:18-5, Criteria and Procedures for Radiological Testing and Analysis, lists all of the requirements with which a laboratory must be in compliance in order to obtain and maintain radiological certification. The sections include requirements for laboratory facilities and safety; laboratory equipment, supplies, and materials; sample collection, handling, and preservation; methodologies; general laboratory practices; quality control programs; and records and data reporting.

N.J.A.C. 7:18-6, Criteria and Procedures for Bioassay Testing and Analysis, lists all of the requirements with which a laboratory must be in compliance in order to obtain and maintain bioassay certification. The sections include requirements for laboratory facilities and safety; laboratory equipment, supplies, and materials; sample collection, handling, and preservation; methodologies; general laboratory practices; quality control programs; and records and data reporting.

Social Impact

The proposed readoption of N.J.A.C. 7:18 will provide for the continued certification of laboratories analyzing drinking water and wastewater. Such certification ensures that these laboratories are capable of analyzing samples according to specified methods and quality control procedures, and provides a common level of proficiency among laboratories. As such, the proposed readoption of N.J.A.C. 7:18 will continue to provide a process by which the Department can assure the quality and reliability of environmental measurement data provided to New Jersey citizens and/or the Department. Such data is essential to ensure the safety of the drinking water consumed by New Jersey's citizens, and that other aquatic resources, such as lakes, streams, reservoirs and bays, are safe for public use. The proposed readoption of N.J.A.C. 7:18 will continue the positive social impact of the chapter.

Economic Impact

The proposed readoption of N.J.A.C. 7:18 will permit the Department to maintain its current Laboratory Certification Program. The Laboratory Certification Program ensures the quality and reliability of the environmental measurement data utilized by the Department and New Jersey citizens. As such, the proposed readoption will serve to reduce instances where environmental measurement data must be rejected because of a laboratory's utilization of improper or inadequate analytical techniques or procedures. This will serve to minimize duplicate sampling and analysis and the increase in costs associated therewith.

The Department anticipates that the benefits of N.J.A.C. 7:18 described above will be accomplished with minimal economic impact on the regulated community. Laboratories that choose to comply with the requirements of N.J.A.C. 7:18 perform between 2,000 and 30,000 analyses per year, depending upon the type of laboratory. They, therefore, are able to spread the cost of the certification fees over a significant number of analyses to minimize the impact of the fees on sample analysis costs.

In sum, the readoption of N.J.A.C. 7:18 will continue the overall positive economic impact of the chapter on the Department and the citizens of New Jersey. The minimal increase in the cost of sampling and analysis resulting from the readoption of N.J.A.C. 7:18 will be easily offset by the savings realized by the reduction in the number of duplicate analyses required to be performed.

The following fees will be readopted without change:

Microbiological Testing	$400.00
Any one of the following chemistry categories: Limited chemistry, Atomic Absorption, Gas Chromatography	$400.00

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Any two of the above-mentioned chemistry categories	$500.00
All three of the above-mentioned chemistry categories	$600.00
Radiological Testing	
Any one or two radiological parameters	$200.00
Any additional radiological parameter	$50.00 per each additional parameter
Bioassay Testing	$400.00

These fees are assessed annually on each laboratory certified to perform the testing specified in the fee schedule.

The annual income generated by the fees that will be readopted is $450,000. These fees will be used towards maintaining the current laboratory certification program. The positions and associated funded by the fees are as follows:

Laboratory Certification Program Staff

Manager
Section Chief
Research Scientist I (2)
Supervising Environmental Specialist
Principal Environmental Specialist (2)
Senior Chemist
Senior Environmental Specialist
Administrative Assistant
Principal Clerk Typist

Estimated Salaries	$530,780.00
Fringe Benefits	$146,760.00
Indirect Costs	$221,555.00

Operating Costs

Printing and Office Supplies	$ 30,000.00
Vehicles (Maintenance and Use)	$ 25,000.00
Vehicles (New)	$ 15,000.00
Scientific Supplies	$ 40,000.00
Scientific Equipment	$ 60,000.00
Maintenance of Equipment	$ 6,000.00
Data Processing Supplies	$ 3,000.00
Data Processing Equipment	$ 20,000.00
Travel	$ 30,000.00
Tuition and Training	$ 15,000.00
Professional Services	$ 5,000.00
Telephones	$ 3,500.00
Postage	$ 8,000.00
Estimated Operating Costs	$260,500.00
Total Laboratory Certification Program Costs	$1,159,595.00

Since the fees in N.J.A.C. 7:18 were adopted in 1981, the Department has experienced a substantial increase in the program's operating costs. Revenue generated by the fees has not kept pace with these expanding costs. In previous years, the revenue shortfalls were made up by funds from other programs of the Department for which the Laboratory Certification Program performed certification work and from the General State Fund. For Fiscal Year 1992, however, funding from the General State Fund will be substantially cut and the Department is forecasting deficits in most program funding. The Laboratory Certification Program, therefore, will not be receiving funds from alternate funding sources in Fiscal Year 1992 and will be operating at a substantial deficit. Additionally, as indicated in the "Summary" above, the Department will be expanding its laboratory certification program. The Department will be amending the fee schedule in N.J.A.C. 7:18-2.6 later this year to cover the increased costs incurred in the administration of the current laboratory program and the additional costs associated with the expanded program. The Department anticipates that an amended fee schedule will be in effect during Fiscal Year 1992.

Environmental Impact

The readoption of N.J.A.C. 7:18 will help assure the quality and reliability of environmental data submitted by certified laboratories to the Department for use in administering its programs. New Jersey businesses and homeowners will continue to benefit from the Laboratory Certification Program because they will be provided with accurate results which will enable them to take appropriate action to avoid exposure to compounds and/or to remediate exposures. Accordingly, the readoption will continue the positive economic impact of the chapter by ensuring that the Department and New Jersey's businesses and citizens are provided with accurate environmental testing data.

Regulatory Flexibility Analysis

The readoption of N.J.A.C. 7:18 will apply to laboratories analyzing samples for the Department's drinking water, and wastewater, programs. The Department is adopting USEPA methods, procedures and protocols as its certification standards to produce the desired accuracy and quality of data. The Department estimates that all of the 600 laboratories impacted by the proposed readoption employ fewer than 100 employees and are, therefore, "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Reporting, recordkeeping and compliance requirements imposed are as outlined in the Summary. The annual cost to comply with the proposed readoption to these "small business" is $400.00 to $1,000, depending upon the extent of the analyses performed at the laboratory. These costs, however, have been incurred by most of these "small businesses" for the past several years, as they are already adhering to the requirements of N.J.A.C. 7:18 and have paid the requisite fees. It, therefore, is unlikely that most of these "small businesses" will incur any additional expense as a result of the proposed readoption of N.J.A.C. 7:18. Additionally, substantial benefits accrue to laboratories which choose to be certified pursuant to N.J.A.C. 7:18. Such certification provides for a broader business base because only a certified laboratory may perform sampling analysis for the Department's NJPDES and SDWA programs.

Full Text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 7:18.

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Marine Fisheries

Atlantic Sturgeon

Pre-Proposed Amendment: N.J.A.C. 7:25-18.1

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 23:2B-1 et seq., particularly 23:2B-6, 23:2B-7 and 23:2B-14.

DEP Docket Number: 013-91-03.

Pre-Proposal Number: PPR 1991-7.

Take notice that the Department of Environmental Protection is contemplating amendment of N.J.A.C. 7:25-18.1 that would limit entry into the Atlantic sturgeon (Acipenser oxyrhynchus oxyrhynchus) gill net fishery to recent participants, impose a New Jersey fishery-wide quota not to exceed New Jersey landings recorded during 1990 and impose a 48-inch minimum size possession limit on the species.

Until recently, New Jersey landings of Atlantic sturgeon, an anadromous species using the Delaware River, Hudson River and the Atlantic Ocean, were almost exclusively incidental catches by trawls. Because of the increased catch of reproductively-immature sturgeon in ocean gill nets, some gill net fishermen have begun directing their catch toward them. Historically, directed gill net harvests have rapidly depleted sturgeon stocks in coastal rivers along the east coast of the United States. Under the recommendations of the Fishery Management Plan for the Atlantic Sturgeon, approved by the Atlantic States Marine Fisheries Commission in November of 1990 (ASMFC Plan), each state was requested to monitor the fishery while controlling Atlantic sturgeon harvest by imposing either a minimum size limit of seven feet, the length of an Atlantic sturgeon at sexual maturity, or a moratorium on all harvest in order to meet the objectives of the ASMFC Plan, including the reversal of the trend towards depletion of the species and improvement and coordination of research and management of the species. It should be noted that further limitations may be necessary as the Federal fishery agencies are considering the Atlantic sturgeon as a candidate for protection under the Endangered Species Act of 1973, 16 U.S.C. §1531 et seq.

In order to meet the objectives of the ASMFC Plan, the Department is contemplating as an interim management measure limiting the size of the rapidly-expanding directed fishery and developing a research program through a cooperative effort with all participating fishermen to assess the impact of the fishery on various Atlantic sturgeon populations. By limiting the landing quota to that of 1990 (currently unlimited), the minimum size to 48 inches (currently 42 inches) and participation to those individ-

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uals who can document participation in the fishery during one or more of the prior three years (currently unlimited as to number), it is anticipated that further reduction of stocks could be forestalled without closing the fishery. In this manner, the objectives of the ASMFC Plan could be met without the necessity of an immediate moratorium on the taking and possession of Atlantic sturgeon under seven feet in length.

By limiting the fishery to those licensed gill netters who have pioneered this new fishery, that is, those individuals who can document participation in the fishery in one or more of the past three years, the contemplated amendment's adverse effects upon those who have a substantial stake in the fishery, both social and economic, would be minimized. At the same time, by imposing scientific data collection and reporting requirements upon these same participants, the Department anticipates it would obtain valuable information directed at managing Atlantic sturgeon stocks to avoid further depletion and to enhance and restore stocks to their previous levels. This information would otherwise be unobtainable because of the limited financial and personnel resources the Department has available to devote to this fishery. To this end, the Department has prepared a letter for distribution to all licensed gill net fishermen requesting information as to past participation in the fishery, as well as the individual's interest in serving on an Atlantic sturgeon management committee.

Interested persons may submit, in writing, views, proposed regulatory language, or arguments relevant to this pre-proposal by May 15, 1991 to:

Samuel A. Wolfe, Esq.
Office of Legal Affairs
Department of Environmental Protection
CN 402
Trenton, NJ 08625

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Oyster Management

Proposed Amendments: N.J.A.C. 7:25A-1.4, 1.5, 1.6 and 1.9

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection.
Authority: N.J.S.A. 50:1-5.
DEP Docket Number: 016-91-03.
Proposal Number: PRN 1991-203.

Submit written comments by May 15, 1991 to:
Samuel A. Wolfe
Office of Legal Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments would make technical changes and add definitions for the purpose of clarification. They would provide for the licensing of a replacement oyster vessel displacing no more than 10 percent more than the previously-licensed vessel (existing provision allows replacement only by vessels of no greater gross tonnage), thereby allowing for relatively small differences in displacement inherent in obtaining replacement vessels of substantially the same harvest capability, and in recognition of the inherent difficulty in precisely determining vessel displacement. Applications for vessel license renewal would be required to include an affidavit of operability. Finally, the proposed amendments would specify in greater detail the time and methods of planting seed oysters during bay season harvest, enforcement requirements and additional remedies for violation of this chapter.

Social Impact

The proposed amendments will have a positive social impact by promoting the equitable use of the State's oyster resource among members of the oyster industry.

Economic Impact

The proposed amendments will have a positive long-term economic impact resulting from better protection and utilization of the oyster resource, thereby improving the economic condition of the oyster industry.

Environmental Impact

The proposed amendments will have a positive long-term environmental impact resulting from better protection and wiser use of the seed oysters that occur naturally in Delaware Bay.

Regulatory Flexibility Analysis

In accordance with the New Jersey Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed amendments would not impose any new reporting or record keeping requirements on the approximately 75 licensees, all of whom are "small businesses." The new compliance requirements as to vessel licensing and utilization of seed oysters should impose no new costs of compliance for small businesses.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

7:25A-1.4 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

. . .

"Council" means the Delaware Bay Section of the Shellfisheries Council.

. . .

"Shellfish Office" means the Bureau of Shellfisheries office located on Miller Avenue, Port Norris, New Jersey. The office telephone number is (609) 785-0730 and marine contact during bay season will be VHF Channel 68.

. . .

"Time" means Eastern Standard time (EST) or Eastern Daylight Savings time (EDT), whichever is in effect that date.

"Validly licensed" means those vessels:

1. Which are operable, that is, capable of taking oysters within the previous calendar year, unless exempted from this requirement by the Commissioner, upon the recommendation of the Council and its finding that exigent circumstances warranted such recommendation; and

2. Which have been licensed and operated as required by the provisions of this chapter.

7:25A-1.5 Licenses

No [new oyster] licenses authorized by N.J.S.A. 50:3-1 shall be issued except [to] **as a renewal for** those vessels validly licensed during the [previous] year **prior to that of the license to be issued.**

7:25A-1.6 Substitution of vessels; license renewal

(a)-(d) (No change.)

(e) A licensed vessel[,] **that is** lost, destroyed or disabled may be replaced within two years of December 31 of the year for which the lost, destroyed, or disabled vessel was licensed. The owner shall file a Statement of Intent with the Department, on or before December 31 of the year for which the lost, destroyed, or disabled vessel was licensed, that he will replace the vessel. The replacement vessel shall be licensed upon proof of loss and of replacement of the previously licensed vessel. No replacement vessels shall have [a] **more than a 10-percent** greater gross tonnage than the previously-licensed vessel.

(f) Except as specified in (c)1 and (e) above, **in order to maintain licensing during subsequent years,** oyster dredge boat licenses [must] **shall** be renewed annually on or before December 31. Application for renewal [must] **shall** include proof of ownership of the vessel, **an affidavit that the vessel was validly licensed** and [the previous year's license. An applicant may be issued a license if he had a license in the previous year] **evidence of compliance with N.J.A.C. 7:25A-1.5.**

(g)-(i) (No change.)

7:25A-1.9 Oyster seed beds

(a) (No change.)

(b) Seed oysters (seed) may be taken for the purpose of planting or replanting at the time and in the manner prescribed on leased grounds:

1. (No change.)

2. In the Atlantic Coast Section only on days and at times designated by prior [arrangement] **written agreement** with the [division] **Division**; or

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3. (No change.)

(c) [Seed] **All seed** oysters shall be planted **on the day taken** by spreading them loosely on the bottom, not in bags, baskets, or other containers. All oysters taken from the natural beds are considered to be seed oysters until planted in the manner prescribed in this section. Seed oysters shall not be marketed or sold for any other purpose.

(d) Seed oysters taken during the seed season shall not be sorted by size, or placed in any bag, bushel, basket or other container, and shall remain on deck until planted, unless written exemption for the containerization of the seed oysters is provided by the Department upon the advice of the Council.

(e) Any vessel unable to plant its seed oysters because of mechanical problems, weather conditions or other verifiable emergency must immediately contact the Shellfish Office by VHF radio, Channel 68, or by telephoning (609) 785-0730.

[(d)]**(f)** [The] **An** Advisory Committee shall be appointed by the Commissioner and shall be composed of two members of the [Delaware Bay Section of the Shellfisheries] Council, two members of the Oyster Research Laboratory of Rutgers University, and the Director of the [division] **Division** or his **or her** designee.

[(e)]**(g)** Physical tests of all areas opened pursuant to this subchapter shall be made near the end of each week by the Advisory Committee described in [(d)]**(f)** above. These tests shall be the determining factor in the Advisory Committee's recommendation to close any or all beds opened by regulation.

[(f)]**(h)** Based upon the data and tests referred to in [(e)]**(g)** above and the recommendation of the Advisory Committee described in [(d)]**(f)** above, the [Delaware Bay Section of the Shellfisheries] Council, with the approval of the Commissioner, may immediately close those beds as may be necessary for the preservation and improvement of the shellfish industry.

1.-2. (No change.)

Recodify existing (g)-(k) as **(i)-(m)**. (No change in text.)

[(l)]**(n)** If a vessel works any part of the day on the seed beds, all oysters in possession shall be deemed seed oysters and must be planted as required in (c) above **and in accordance with this chapter before the vessel may return to harvesting from the seed beds**.

(o) The operator of, or any other person aboard, any oyster harvesting vessel subject to this chapter shall immediately comply with instructions and signals issued by an authorized law enforcement officer and comply with his or her instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, and catch, for the purpose of enforcement of this chapter.

(p) This chapter shall apply to any vessel which harvests or receives seed oysters in any manner.

Recodify existing (m) as **(q)**. (No change in text.)

(r) Any oysters taken, transported, planted or otherwise handled in violation of this chapter may be seized and replanted upon the State's natural seed beds.

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Notice of Administrative Correction
Hazardous Waste Fees
Proposed Amendment: N.J.A.C. 7:26-4A.3

Take notice that the Department of Environmental Protection has discovered an error in the presentation of proposed changes in the notice of proposed amendment to N.J.A.C. 7:26-4A.3 published in the March 18, 1991 New Jersey Register at 23 N.J.R. 814(a). On Register pages 817 and 818, the text of N.J.A.C. 7:26-4A.3(e)2i through 12 is proposed new text, and should have appeared in boldface in the notice of proposal. This notice of administrative correction is published in accordance with N.J.A.C 1:30-2.7.

(b)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Definition of Hazardous Waste
Mixture Rule
Proposed Amendment: N.J.A.C. 7:26-8.1

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6.

DEP Docket Number: 011-91-03.

Proposal Number: PRN 1991-174.

Submit comments, identified by the Docket Number given above, by June 14, 1991 to:

Samuel A. Wolfe
Administrative Practice Officer
Office of Legal Affairs
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection is proposing an amendment to the definition of hazardous waste set forth at N.J.A.C. 7:26-8.1. The amendment will make the definition consistent with Federal regulations regarding mixtures of solid waste with a hazardous waste which is listed at N.J.A.C. 7:26-8.13, 8.14, 8.15 or 8.20 ("listed waste") solely because it exhibits a "characteristic" of hazardous waste (see 40 CFR 261.3(a)2(iii)).

The proposed amendment is an exemption to the so-called "mixture rule" at N.J.A.C. 7:26-8.1(b)2. The mixture rule requires that if any material is mixed with a listed waste, then the mixture becomes that listed waste. This result seems inappropriate for wastes which are listed because they exhibit characteristics of hazardous waste since the resultant mixture can be tested for characteristics. Therefore, the amendment is exempting from the mixture rule mixtures of non-hazardous soild waste and a hazardous waste that is listed in N.J.A.C. 7:26-8.13, 8.14, 8.15, or 8.20 solely because it exhibits one or more of the characteristics of hazardous waste identified in N.J.A.C. 7:26-8.9 through 8.12, if the resultant mixture no longer exhibits any characteristic of hazardous waste identified in N.J.A.C. 7:26-8.9 through 8.12. Such mixtures will be considered non-hazardous solid waste in New Jersey.

The amendment also clarifies the Department's intent to allow this exemption only in limited circumstances. This amendment is specifically not intended to allow the intentional mixing of waste once generated. The mixture would have to be initially generated as a mixture or the result of the cleanup of an accidental discharge. Since this amendment is an exemption to the mixture rule, the burden of proof is on the person claiming the exemption in accordance with N.J.A.C. 7:26-1.13 in an enforcement action.

Social Impact

This proposed amendment will have a positive social impact. It will enable New Jersey generators of waste mixtures which do not exhibit hazardous characteristics to dispose of these wastes as solid waste rather than hazardous waste. Wastes which do not otherwise meet the definition of hazardous waste should not have to be handled as hazardous waste. The Department believes that managing these mixtures in conformance with all applicable solid waste laws and rules will adequately and properly handle this material since the mixture is currently a hazardous waste by definition and not because the waste exhibits the characteristics of hazardous waste.

Economic Impact

This proposed amendment may have a positive economic impact. It may reduce the cost to generators for transportation and disposal of mixtures which do not exhibit characteristics of hazardous waste since the amendment will allow such mixtures to be handled as solid waste rather than hazardous waste. Presently, the mixtures affected by these amendments are subject to the State's hazardous waste management laws and regulations which are generally more costly to comply with than those laws and regulations governing the handling material under the State's solid waste laws.

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Environmental Impact

The proposed amendment will have no significant environmental impact. The Department believes that regulating the mixtures affected by this amendment as hazardous wastes, due to the current form of the mixture rule, is no longer necessary. To qualify for this exemption, mixtures may not exhibit characteristics of hazardous waste. Since such mixtures no longer exhibit characteristics of hazardous waste and do not otherwise meet the definition of hazardous waste, the Department believes these mixtures can be adequately and properly handled under the State's solid waste management program.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that this proposed amendment will not impose additional reporting, recordkeeping or other compliance requirements on small businesses. In fact, all businesses which generate, transport or otherwise handle wastes which meet the terms of the "mixture rule" exemption being added by this amendment are not subject to the State's hazardous waste management rules for that mixture. Such wastes are still subject to regulation under the State's non-hazardous solid waste management rules at N.J.A.C. 7:26, however. Those rules will not impose an additional level of reporting, recordkeeping or other compliance requirements but, rather, will impose somewhat different requirements which are no more burdensome than the hazardous waste management rules.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

7:26-8.1 Definition of hazardous waste

(a) A solid waste, as defined in N.J.A.C. 7:26-1.6, is a hazardous waste if:

1. (No change.)

2. It meets any one or more of the following criteria:

i.-ii. (No change.)

iii. It is a mixture of solid waste and one or more hazardous wastes listed in N.J.A.C. 7:26-8.13, 8.14, [or] 8.15, **or 8.20**; however, the following mixtures of solid and hazardous wastes listed in N.J.A.C. 7:26-8.13, 8.14, and 8.15 are not hazardous (except by application of paragraphs (a)2i or ii above, or [iv or] v, **vi or vii** below) if the generator can demonstrate that the mixture consists of process wastewater, the discharge of which is specified and limited in a permit issued pursuant to N.J.A.C. 7:14A [et seq.] or Section 402 or Section 307(b) of the Clean Water Act, 33 U.S.C. 1251 et al. (and consequently N.J.S.A. 58:10A-1 et seq. or N.J.S.A. [58:11.49] **58:11-49** et seq.), and the generator has notified the Division of Water Resources when claiming exemption pursuant to (a)2iii(1), (2), (3) or (5) below.

(1) One or more of the following spent solvents listed in N.J.A.C. 7:26-8.13: carbon tetrachloride, tetrachloroethylene, trichoroethylene, provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of a facility's wastewater treatment or pre-treatment system does not exceed one part per million; or

(2)-(5) (No change.)

iv. It is a mixture of solid waste and a hazardous waste that is listed in N.J.A.C. 7:26-8.13, 8.14, 8:15 or 8.20 solely because it exhibits one or more of the characteristics of hazardous waste identified in N.J.A.C. 7:26-8.9 through 8.12, unless the resultant mixture no longer exhibits any characteristic of hazardous waste identified in N.J.A.C. 7:26-8.9 through 8.12, and the mixture is:

(1) Initially generated as a mixture; or

(2) The result of containment or cleanup of an accidental discharge.

Recodify existing iv.-vi. as **v.-vii.** (No change in text.)

(b)-(d) (No change.)

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Hazardous Waste Criteria, Identification, and Listing

Proposed Amendments: N.J.A.C. 7:26-8.15 and 8.16

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6.

DEP Docket Number: 012-91-03.

Proposal Number: PRN 1991-175.

Submit written comments, identified by the Docket Number given above, by May 15, 1991 to:

Samuel A. Wolfe
Administrative Practice Officer
Office of Legal Affairs
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Environmental Protection (Department) is proposing to amend its hazardous waste code listings at N.J.A.C. 7:26-8.15(a)5 and (a)6, which are the P and the U listings, and N.J.A.C. 7:26-8.16(a), the list of hazardous constituents. The proposed amendments will: (1) bring the existing entries in the P and U lists of commercial chemical products or manufacturing chemical intermediates, and the list of hazardous constituents, into conformance with standard nomenclature; and (2) add Chemical Abstracts Service (CAS) Registry Numbers to the P, U, and hazardous constituents lists. The amendments correct previous typographical errors, bring the spelling of substances and the use of alternative names for substances into conformance with standard nomenclature, and provide an additional means of identification in the form of CAS Registry Numbers in order to facilitate the identification of hazardous waste streams by the generator or the Department pursuant to N.J.A.C. 7:26-8.6 and 7:26-8.7. The proposed chemical names correspond to the nomenclature in the CAS Registry Handbook—Number Section and to the CAS Ninth Collection Index. The addition of the CAS Numbers will maintain the equivalency of the State lists with the lists maintained by the United States Environmental Protection Agency ("USEPA") at 40 CFR §261.33(e), (f), and at 40 CFR §261, Appendix VIII. The USEPA revised its listings incorporating corrections and CAS Registry Number additions (see 51 Fed. Reg. #28,296, August 6, 1986 and 53 Fed. Reg. 13,382, April 22, 1988 codified at 40 CFR §261.33 and 40 CFR Part 261, Appendix VIII).

Social Impact

The proposed amendments will have a positive social impact by facilitating hazardous waste identification procedures which are used by the regulated community.

Economic Impact

The Department anticipates no adverse economic impact from the proposed amendments, because they provide technical corrections and clarification only, and impose no additional requirements.

Environmental Impact

The proposed amendments will have a positive environmental impact in that they will facilitate identification, reporting, and management of hazardous waste streams.

Regulatory Flexibility Statement

The proposed amendments will have a minimal impact on small businesses, because they involve technical corrections and clarifications only. The amendments do not impose additional reporting, recordkeeping, professional services, or costs.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets with asterisks ***[thus]***). Note: Because some of the chemical names in the lists include brackets as part of the name, for the purpose of this proposal, all proposed text deletions are signified through brackets with asterisks. Text bracketed without asterisks does not signify a deletion, but part of the listed term.):

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7:26-8.15 Discarded chemical commercial products, off-specification species, containers, and spill residues thereof

(a) The following discarded commercial chemical products, manufactured for commercial or manufacturing use, their off-specification species, or their container residues or spill residues are hazardous wastes if and when they are a solid waste as defined at N.J.A.C. 7:26-1.4:

1.-4. (No change.)

5. The following commercial chemical products or manufacturing chemical intermediates, referred to in (a)1 through 4 above, are identified as acute hazardous waste (H). These wastes and their corresponding *[EPA]* Hazardous Waste Numbers **and Chemical Abstracts Service (CAS) Registry Numbers** are:

AGENCY NOTE: The list of commercial chemical products or manufacturing chemical intermediates referred to in (a)1 through 4 at N.J.A.C. 7:26-8.15(a)5, is proposed for repeal, but is not published in the proposal.

Hazardous Waste Number	Substance	Chemical Abstracts Number
P023	Acetaldehyde, chloro-	107-20-0
P002	Acetamide, N-(aminothoxomethyl)-	591-08-2
P057	Acetamide, 2-fluoro-	640-19-7
P058	Acetic acid, fluoro-, sodium salt	62-74-8
P001	3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin and salts when present at concentrations greater than 0.3%	81-81-2*
P002	1-Acetyl-2-thiourea	591-08-2
P003	crolein	107-02-8
P070	Aldicarb	116-06-3
P004	Aldrin	309-00-2
P005	Allyl alcohol	107-18-6
P006	Aluminum phosphide (R,T)	20859-73-8
P007	5-(Aminomethyl)-3-isoxazolol	2763-96-4
P008	4-Aminopyridine	504-24-5
P009	Ammonium picrate (R)	131-74-8
P119	Ammonium vanadate	7803-55-6
P099	Argentate(1-), bis(cyano-C-)-, potassium	506-61-6
P010	Arsenic acid H_3As_4,	7778-39-4
P012	Arsenic oxide As_2O_3	1327-53-3
P011	Arsenic oxide As_2O_5	1303-28-2
P011	Arsenic pentoxide	1303-28-2
P012	Arsenic trioxide	1327-53-3
P038	Arsine, diethyl-	692-42-2
P036	Arsonous dichloride, phenyl-	696-28-6
P054	Aziridine	151-56-4
P067	Aziridine, 2-methyl-	75-55-8
P013	Barium cyanide	542-62-1
P024	Benzenamine, 4-chloro-	106-47-8
P077	Benzenamine, 4-nitro-	100-01-6
P028	Benzene, (chloromethyl)-	100-44-7
P042	1,2-Benzendiol, 4-[1-hydroxy-2-(methylamino)ethyl]-, (R)-	51-43-4
P046	Benzeneethanamine, alpha,alpha-dimethyl-	122-09-8
P014	Benzenethiol	108-98-5
P001	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, and salts, when present at concentrations greater than 0.3%	81-81-2*
P028	Benzyl chloride	100-44-7
P015	Beryllium	7440-41-7
P017	Bromoacetone	598-31-2
P018	Brucine	357-57-3
P045	2-Butanone, 3-3-dimethyl-1-(methylthio)-, 0-[methylamino)carbonyl]oxime	39196-18-4
P021	Calcium cyanide	592-01-8
P021	Calcium cyanide $Ca(CN)_2$	592-01-8
P022	Carbon Disulfide	75-15-0
P095	Carbonic dichloride	75-44-5
P023	Chloroacetaldehyde	107-20-0
P024	p-Chloroaniline	106-47-8
P026	1-(o-Chlorophenyl)thiourea	5344-82-1
P027	3-Chloropropionitrile	542-76-7
P029	Copper cyanide	544-92-3
P029	Copper cyanide Cu(CN)	544-92-3
P030	Cyanides (soluble cyanide salts), not otherwise specified	—
P031	Cyanogen	460-19-5
P033	Cyanogen chloride	506-77-4
P033	Cyanogen chloride (CN)C1	506-77-4
P034	2-Cyclohexyl-4,6-dinitrophenol	131-89-5
P016	Dichloromethyl ether	542-88-1
P036	Dichlorophenylarsine	696-28-6
P037	Dieldrin	60-57-1
P038	Diethylarsine	692-42-2
P041	Diethyl-p-nitrophenyl phosphate	311-45-5
P040	0,0-Diethyl 0-pyrazinyl phosphorothioate	297-97-2
P043	Diisopropylfluorophosphate (DFP)	55-91-4
P004	1,4,5,8-Dimethanonaphthalene 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a,-hexahydro—, (1alpha, 4alpha, 4abeta, 5alpha, 8alpha, 8abeta)	309-00-2
P060	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8 8a-hexahydro-, (1alpha, 4alpha, 4abeta, 5beta, 8beta, 8abeta)	465-73-6
P037	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha,2beta,2aalpha,3beta,6beta,6aalpha, 7beta,7aalpha)-	60-57-1
P051	2,7:3,6-Dimethanonaphth [2,3-b]boxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha,2beta,2abeta,3alpha, 6alpha,6abeta,7beta,7aalpha-, and metabolites	72-20-8*
P044	Dimethoate	60-51-5
P046	alpha, alpha-Dimethylphenethylamine	122-09-8
P047	4,6-Dinitro-o-cresol, and salts	534-52-1*
P048	2,4-Dinitrophenol	51-28-5
P020	Dinoseb	88-85-7
P085	Diphosphoramide, octamethyl-	152-16-9
P111	Diphosphoric acide, tetraethyl ester	107-49-3
P039	Disulfoton	298-04-4
P049	Dithiobiuret	541-53-7
P050	Endosulfan	115-29-7
P088	Endothall	145-73-3
P051	Endrin	72-20-8
P051	Endrin, and metabolites	72-20-8*
P042	Epinephrine	51-43-4
P031	Ethanedinitrile	460-19-5
P066	Ethanimidothioic acid, N-[[(methylamino)carbonyl]oxy]-, methyl ester	16752-77-5
P101	Ethyl cyanide	107-12-0
P054	Ethyleneimine	151-56-4
P097	Famphur	52-85-7
P056	Fluorine	7782-41-4
P057	Fluoroacetamide	640-19-7
P058	Fluoroacetic acid, sodium salt	62-74-8
P065	Fulminic acid, mercury(2+) salt (R,T)	628-86-4
P059	Heptachlor	76-44-8
P062	Hexaethyl tetraphosphate	757-58-4
P116	Hydrazinecarbothioamide	79-19-6
P068	Hydrazine, methyl-	60-34-4
P063	Hydocyanic acid	74-90-8
P063	Hydrogen cyanide	74-90-8
P096	Hydrogen phosphide	7803-51-2
P060	Isodrin	465-73-6
P007	3(2H)-Isoxazolone, 5-(aminomethyl)-	2763-96-4
P092	Mercury, (acetato-0)phenyl-	62-38-4
P065	Mercury, fulminate (R,T)	628-86-4
P082	Methanamine, N-methyl-N-nitoro-	62-75-9
P064	Methane, isocyanato-	624-83-9

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P016	Methane, oxybis[chloro-	542-88-1
P112	Methane, tetranitro-(R)	509-14-8
P118	Methanethiol, trichloro-	75-70-7
P050	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6, 9,9a-hexahydro-, 3-oxide	115-29-7
P059	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	76-44-8
P066	Methomyl	16752-77-5
P068	Methyl hydrazine	60-34-4
P064	Methyl isocyanate	624-83-9
P069	2-Methyllactonitrile	75-86-5
P071	Methyl parathion	298-00-0
P072	alpha-Naphthylthiourea	86-88-4
P073	Nickel carbonyl	13463-39-3
P073	Nickel carbonyl $Ni(CO)_4$(T-4)-	13463-39-3
P074	Nickel cyanide	557-19-7
P074	Nickel cyanide $Ni(CN)_2$	557-19-7
P075	Nicotine and salts	54-11-5*
P076	Nitric oxide	10102-43-9
P077	p-Nitroaniline	100-01-6
P078	Nitrogen dioxide	10102-44-0
P076	Nitrogen oxide NO	10102-43-9
P078	Nitrogen oxide NO_2	10102-44-0
P081	Nitroglycerine (R)	55-63-0
P082	N-Nitrosodimethylamine	62-75-9
P084	N-Nitrosomethylvinylamine	4549-40-0
P085	Octamethylpyrophosphoramide	152-16-9
P087	Osmium oxide OsO_4,(T-4)-	20816-12-0
P087	Osmium tetroxide	20816-12-0
P088	7-Oxabicyclo[2,2,1]heptane-2,3-dicarboxylic acid	145-73-3
P089	Parathion	56-38-2
P034	Phenol, 2-cyclohexyl-4,6-dinitro-	131-89-5
P048	Phenol, 2,4-dinitro-	51-28-5
P047	Phenol, 2-methyl-4,6-dinitro-, and salts	534-52-1*
P020	Phenol, 2-(1-methylpropyl)-4,6-dinitro-	88-85-7
P009	Phenol, 2,4,6-trinitro-, ammonium salt (R)	131-74-8
P092	Phenylmercury acetate	62-38-4
P093	Phenylthiourea	103-85-5
P094	Phorate	298-02-2
P095	Phosgene	75-44-5
P096	Phosphine	7803-51-2
P041	Phosphoric acid, diethyl 4-nitrophenyl ester	311-45-5
P039	Phosphorodithioic acid, 0-0-diethyl S-[2(ethythio)ethyl] ester	298-04-4
P094	Phosphorodithioic acid, 0,0-diethyl S-[(ethythio)methyl] ester	298-02-2
P044	Phosphorodithioic acid, 0,0-diethyl S-[2-(methlamino)-2-oxoethyl] ester	60-51-5
P043	Phosphorofluoridic acid, bis(1-methylethyl) ester	55-91-4
P089	Phosphorothioic acid, 0,0-diethyl 0-(4-nitrophenyl) ester	56-38-2
P040	Phosphorothioic acid, 0,0-diethyl 0-pyrazinyl ester	297-97-2
P097	Phosphorothioic acid, 0-[4-[(dimethylamino)sulfonyl]phenyl] 0,0-dimethyl ester	52-85-7
P071	Phosphorothioic acid, 0,0,-dimethyl 0-(4-nitrophenyl) ester	298-00-0
P110	Plumbane, tetraethyl	78-00-2
P098	Potassium cyanide	151-50-8
P098	Potassium cyanide K(CN)	151-50-8
P099	Potassium silver cyanide	506-61-6
P070	Propanal, 2-methyl-2-(methythio)-0-[(methylamino)carbonyl]oxime	116-06-3
P101	Propanenitrile	107-12-0
P027	Propanenitrile, 3-chloro	542-76-7
P069	Propanenitrile, 2-hydroxy-2-methyl	75-86-5
P081	1,2,3,-Propanetriol, trinitrate (R)	55-63-0
P017	2-Propanone, 1-bromo-	598-31-2
P102	Propargyl alchol	107-19-7
P003	2-Propenal	107-02-8
P005	2-Propen-1-o1	107-18-6
P067	1,2-Propylenimine	75-55-8
P102	2-Propyn-1-o1	107-19-7
P008	4-Pyridinamine	504-24-5
P075	Pyridine, 3-(1-methyl-2-pyrrolidinyl)-,(S), and salts	54-11-5*
P114	Selenious acid, dithallium(1+) salt	12039-52-0
P103	Selenourea	630-10-4
P104	Silver cyanide	506-64-9
P104	Silver cyanide Ag(CN)	506-64-9
P105	Sodium azide	26628-22-8
P106	Sodium cyanide	143-33-9
P106	Sodium cyanide Na(CN)	143-33-9
P107	Strontium sulfide SrS	1314-96-1
P108	Strychnidin-10-one, and salts	57-24-9*
P018	Strychnidin-10-one, 2,3-dimethoxy	357-57-3
P106	Strychnine, and salts	57-24-9*
P115	Sulfuric acid, dithallium(1+) salt	7446-18-6
P109	Tetraethyldithiopyrophosphate	3689-24-5
P110	Tetraethyl lead	78-00-2
P111	Tetraethyl pyrophosphate	107-49-3
P112	Tetranitromethane (R)	509-14-8
P062	Tetraphosphoric acid, hexaethyl ester	757-58-4
P113	Thallic oxide	1314-32-5
P113	Thallium oxide Tl_2O_3	1314-32-5
P114	Thallium(I) selenite	12039-52-0
P115	Thallium(I) sulfate	7446-18-6
P109	Thiodiphosphoric acid, tetraethyl ester	3689-24-5
P045	Thiofanox	39196-18-4
P049	Thioimidodicarbonic diamide	541-53-7
P014	Thiophenol	108-98-5
P116	Thiosemicarbazide	79-19-6
P026	Thiourea, (2-chlorophenyl)-	5344-82-1
P072	Thiourea, 1-naphthalenyl-	86-88-4
P093	Thiourea, phenyl-	103-85-5
P123	Toxaphane	8001-35-2
P118	Trichloromethanethiol	75-70-7
P119	Vanadic acid, ammonium salt	7803-55-6
P120	Vanadium oxide V_2O_5	1314-62-1
P120	Vanadium péntoxide	1314-62-1
P084	Vinylamine, N-methyl-N-nitroso-	4549-40-0
P001	Warfarin and salts, when present at concentrations greater than 0.3%	81-81-2*
P121	Zinc cyanide	557-21-1
P121	Zinc cyanide $Zn(CN)_2$	557-21-1
P122	Zinc phosphide Zn_3P_2, when present at concentrations greater than 10% (R,T,)	1314-84-7

*CAS Number is given for the parent compound only.

6. The following commercial chemical products or manufacturing chemical intermediates, referred to in (a)1, 2 and 4 above, are identified as toxic wastes (T) unless otherwise designated. These wastes and their corresponding *[EPA]* Hazardous Waste Numbers and Chemical Abstract Service (CAS) Registry Numbers are:

AGENCY NOTE: The list of commercial chemical products or manufacturing chemical intermediates referred to in (a)1, 2, 4 above, which currently appears at N.J.A.C. 7:26-8.15(a)6, is proposed for repeal, but is not published in the proposal.

Hazardous Waste Number	Substance	Chemical Abstracts Number
U001	Acetaldehyde (I)	75-07-0
U034	Acetaldehyde, trichloro-	75-87-6
U187	Acetamide, N-(4-ethoxyphenyl)-	62-44-2
U005	Acetamide, N-9H-fluoren-2-yl-	53-96-3
U240	Acetic acid, (2,4-dichlorophenoxy)-, salts & esters	94-75-7*
U112	Acetic acid ethyl ester (I)	141-78-6
U144	Acetic acid, lead(2+) salt	301-04-2

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U214	Acetic acid, thallium(1+) salt	563-68-8
See F027	Acetic acid, (2,4,5-trichlorophenoxy)-	93-76-5
U002	Acetone (I)	67-64-1
U003	Acetonitrile (I,T)	75-05-8
U248	3-(alpha-Acetonylbenzyl)-4-hydroxcoumarin and salts, when present at concentrations of 0.3 percent or less	81-81-2*
U004	Acetopheone	98-86-2
U005	2-Acetylaminofluorene	53-96-3
U006	Acetyl chloride (C,R,T)	75-36-5
U007	Acrylamide	79-06-1
U008	Acrylic acid (I)	79-10-7
U009	Acrylonitrile	107-13-1
U011	Amitrole	61-82-5
U012	Aniline (I,T)	62-53-3
U136	Arsinic acid, dimethyl-	75-60-5
U014	Auramine	492-80-8
U015	Azaserine	115-02-6
U010	Azirino[2',3':3,4]pyrrolo [1,2-a]indole-4,7-dione, 6-amino-8-[[(aminocarbonyl)oxy]methyl]-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-[1aS-(1aalpha, 8beta,8aalpha, 8balpha)]-	50-07-7
U157	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-	56-49-5
U016	Benz[c]acridine	225-51-4
U017	Benzal chloride	98-87-3
U192	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-	23950-58-5
U018	Benz[a]anthracene	56-55-3
U094	Benz[a]anthracene,7,12-dimethyl-	57-97-6
U012	Benzenamine (I,T)	62-53-3
U014	Benzenamine, 4,4'-carbonimidoylbis[N,N-dimethyl-	492-80-8
U049	Benzenamine, 4-chloro-2-methyl-, hydrochloride	3165-93-3
U093	Benzenamine, N,N-dimethyl-4-(phenylazo)-	60-11-7
U328	Benzenamine, 2-methyl-	95-53-4
U353	Benzenamine, 4-methyl-	106-49-0
U158	Benzenamine, 4,4'-methylenebis(2-chloro-	101-14-4
U222	Benzenamine, 2-methyl-, hydrochloride	636-21-5
U181	Benzenamine, 2-methyl-5-nitro	99-55-8
U019	Benzene (I,T)	71-43-2
U038	Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester	510-15-6
U030	Benzene, 1-bromo-4-phenoxy-	101-55-3
U035	Benzenebutanoic acid, 4-[bis(2-chloroethyl)amino]-	305-03-3
U037	Benzene, chloro-	108-90-7
U221	Benzenediamine, ar-methyl-	25376-45-8
U028	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester	117-81-7
U069	1,2-Benzenedicarboxylic acid, dibutyl ester	84-74-2
U088	1,2-Benzenedicarboxylic acid, diethyl ester	84-66-2
U102	1,2-Benzenedicarboxylic acid, dimethyl ester	131-11-3
U107	1,2-Benzenedicarboxylic acid, dioctyl ester	117-84-0
U070	Benzene, 1,2-dichloro-	95-50-1
U071	Benzene, 1,3-dichloro-	541-73-1
U072	Benzene, 1,4-dichloro-	106-46-7
U060	Benzene, 1,1'-(2,2-dichloroethylidene) bis(4-chloro-	72-54-8
U017	Benzene, (dichloromethyl)-	98-87-3
U223	Benzene, 1, 3-diisocyanatomethyl-(R,T)	26471-62-5
U239	Benzene, dimethyl-(I,T)	1330-20-7
U201	1,3-Benzenediol	108-46-3
U127	Benzene, hexachloro-	118-74-1
U056	Benzene, hexahydro-(I)	110-82-7
U220	Benzene, methyl-	108-88-3
U105	Benzene, 1-methyl-2,4-dinitro	121-14-2
U106	Benzene, 2-methyl-1,3-dinitro	606-20-2
U055	Benzene, (1-methylethyl)- (I)	98-82-9
U169	Benzene, nitro	98-95-3
U183	Benzene, pentachloro-	608-93-5
U185	Benzene, pentachloronitro-	82-68-8
U020	Benzenosulfonic acid chloride (C,R)	98-09-9
U020	Benzenesulfonyl chloride (C,R)	98-09-9
U207	Benzene, 1,2,4,5-tetrachloro-	95-94-3
U061	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-chloro-	50-29-3
U247	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-methoxy	72-43-5
U023	Benzene, (trichloromethyl)- (C,R,T)	98-07-7
U234	Benzene, 1,3,5-trinitro	99-35-4
U021	Benzidine	92-87-5
U202	1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide, & salts	81-07-2*
U203	1,3-Benzodioxole, 5-(2-propenyl)-	94-59-7
U141	1,3-Benzodioxole, 5-(1-propenyl)-	120-58-1
U090	1,3-Benzodioxole, 5-propyl-	94-58-6
U064	Benzo[rst]pentaphene	189-55-9
U248	2H- 1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, & salts, when present at concentrations of 0.3% or less	81-81-2*
U022	Benzo[a]pyrene	50-32-8
U197	p-Benzoquinone	106-51-4
U023	Benzotrichloride (C,R,T)	98-07-7
U085	2,2-Bioxirane	1464-53-5
U021	[1,1'-Biphenyl]-4,4'-diamine	92-87-5
U073	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dichloro-	91-94-1
U091	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethoxy-	119-90-4
U095	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethyl-	119-93-7
U225	Bromoform	75-25-2
U030	4-Bromophenyl phenyl ether	101-55-3
U128	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	87-68-3
U172	1-Butanamine, N-butyl-N-nitroso-	924-16-3
U031	1-Butanol (I)	71-36-3
U159	2-Butanone (I,T)	78-93-3
U160	2-Butanone, peroxide (R,T)	1338-23-4
U053	2-Butenal	4170-30-3
U074	2-Butene, 1,4-dichloro- (I,T)	764-41-0
U143	2-Butenoic acid, 2-methyl-, 7-[[2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy]methyl]-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, [1S-[1alpha(Z),7(2S*,3R*),7aalpha)]-	303-34-4
U031	n-Butyl alcohol (I)	71-36-3
U136	Cacodylic acid	75-60-5
U032	Calcium chromate	13765-19-0
U238	Carbamic acid, ethyl ester	51-79-6
U178	Carbamic acid, methylnitroso-, ethyl ester	615-53-2
U097	Carbamic chloride, dimethyl-	79-44-7
U114	Carbamodithioic acid, 1,2-ethanediylbis-, salts & esters	111-54-6*
U062	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3-dichloro-2-propenyl) ester	2303-16-4
U215	Carbonic acid, dithallium(1+) salt	6533-73-9
U033	Carbonic difluoride (R,T)	353-50-4
U156	Carbonochloridic acid, methyl ester (I,T)	79-22-1
U033	Carbon oxyfluoride (R,T)	353-50-4
U211	Carbon tetrachloride	56-23-5
U034	Chloral	75-87-6
U035	Chlorambucil	305-03-3
U036	Chlordane, alpha & gamma isomers	57-74-9
U026	Chlornaphazin	494-03-1
U037	Chlorobenzene	108-90-7
U038	Chlorobenzilate	510-15-6
U039	p-Chloro-m-cresol	59-50-7
U042	2-Chloroethyl vinyl ether	110-75-8
U044	Chloroform	67-66-3
U046	Chloromethyl methyl ether	107-30-2
U047	beta-Chloronaphthalene	91-58-7
U048	o-Chlorophenol	95-57-8
U049	4-Chloro-o-toluidine, hydrochloride	3165-93-3
U032	Chromic acid H_2CrO_4, calcium salt	13765-19-0
U050	Chrysene	218-01-9

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U051	Creosote	—
U052	Cresol (Cresylic acid)	1319-77-3
U053	Crotonaldehyde	4170-30-3
U055	Cumene (I)	98-82-8
U246	Cyanogen bromide (CN)Br	506-68-3
U197	2,5-Cyclohexadiene-1,4-dione	106-51-4
U056	Cyclohexane (I)	110-82-7
U129	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha,2alpha,3beta,4alpha,5alpha,6beta)-	58-89-9
U057	Cyclohexanone (I)	108-94-1
U130	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	77-47-4
U058	Cyclophosphamide	50-18-0
U240	2,4-D, salts & esters	94-75-7*
U059	Daunomycin	20830-81-3
U060	DDD	72-54-8
U061	DDT	50-29-3
U062	Diallate	2303-16-4
U063	Dibenz[a,h]anthracene	53-70-3
U064	Dibenzo[a,i]pyrene	189-55-9
U066	1,2-Dibromo-3-chloropropane	96-12-8
U069	Dibutyl phthalate	84-74-2
U070	o-Dichlorobenzene	95-50-1
U071	m-Dichlorobenzene	541-73-1
U072	p-Dichlorobenzene	106-46-7
U073	3,3'-Dichlorobenzidine	91-94-1
U074	1,4-Dichloro-2-butene (I,T)	764-41-0
U075	Dichlorodifluoromethane	75-71-8
U078	1,1-Dichloroethylene	75-35-4
U079	1,2-Dichloroethylene	156-60-5
U025	Dichloroethyl ether	111-44-4
U027	Dichloroisopropyl ether	108-60-1
U024	Dichloromethoxy ethane	111-91-1
U081	2,4-Dichlorophenol	120-83-2
U082	2,6-Dichlorophenol	87-65-0
U084	1,3-Dichloropropene	542-75-6
U085	1,2:3,4-Diepoxybutane (I,T)	1464-53-5
U108	1,4-Diethyleneoxide	123-91-1
U028	Diethylhexyl phthalate	117-81-7
U086	N,N'-Diethylhydrazine	1615-80-1
U087	O,O-Diethyl S-methyl dithiophosphate	3288-58-2
U088	Diethyl phthalate	84-66-2
U089	Diethylstilbesterol	56-53-1
U090	Dihydrosafrole	94-58-6
U091	3,3'-Dimethoxybenzidine	119-90-4
U092	Dimethylamine (I)	124-40-3
U093	p-Dimethylaminoazobenzene	60-11-7
U094	7,12-Dimethylbenz[a]anthracene	57-97-6
U095	3,3'-Dimethylbenzidine	119-93-7
U096	alpha,alpha-Dimethylbenzylhydroperoxide (R)	80-15-9
U097	Dimethylcarbamoyl chloride	79-44-7
U098	1,1-Dimethylhydrazine	57-14-7
U099	1,2-Dimethylhydrazine	540-73-8
U101	2,4-Dimethylphenol	105-67-9
U102	Dimethyl phthalate	131-11-3
U103	Dimethyl sulfate	77-78-1
U105	2,4-Dinitrotoluene	121-14-2
U106	2,6-Dinitrotoluene	606-20-2
U107	Di-n-octyl phthalate	117-84-0
U108	1,4-Dioxane	123-91-1
U109	1,2-Diphenylhydrazine	122-66-7
U110	Dipropylamine (I)	142-84-7
U111	Di-n-propylnitrosamine	621-64-7
U041	Epichlorohydrin	106-89-8
U001	Ethanal (I)	75-07-0
U174	Ethanamine, N-ethyl-N-nitroso-	55-18-5
U155	1,2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-	91-80-5
U067	Ethane, 1,2-dibromo-	106-93-4
U076	Ethane, 1,1-dichloro-	75-34-3
U077	Ethane, 1,2-dichloro-	107-06-2
U131	Ethane, hexachloro-	67-72-1
U024	Ethane, 1,1'-[methylenebis(oxy)]bis[2-chloro-	111-91-1
U117	Ethane, 1,1'-oxybis-(I)	60-29-7
U025	Ethane, 1,1'-oxybis[2-chloro-	111-44-4
U184	Ethane, pentachloro-	76-01-7
U208	Ethane, 1,1,1,2-tetrachloro-	630-20-6
U209	Ethane, 1,1,2,2-tetrachloro-	79-34-5
U218	Ethanethioamide	62-55-5
U226	Ethane, 1,1,1-trichloro-	71-55-6
U227	Ethane, 1,1,2-trichloro-	79-00-5
U359	Ethanol, 2-ethoxy-	110-80-5
U173	Ethanol, 2,2'-(nitrosoimino)bis-	1116-54-7
U004	Ethanone, 1-phenyl-	98-86-2
U043	Ethene, chloro-	75-01-4
U042	Ethene, (2-chloroethoxy)-	110-75-8
U078	Ethene, 1,1-dichloro-	75-35-4
U079	Ethene, 1,2-dichloro-, (E)-	156-60-5
U210	Ethene, tetrachloro-	127-18-4
U228	Ethene, trichloro-	79-01-6
U112	Ethyl acetate (I)	141-78-6
U113	Ethyl acrylate (I)	140-88-5
U238	Ethyl carbamate (urethane)	51-79-6
U117	Ethyl ether (I)	60-29-7
U114	Ethylenebisdithiocarbamic acid, salts and esters	111-54-6*
U067	Ethylene dibromide	106-93-4
U077	Ethylene dichloride	107-06-2
U359	Ethylene glycol monoethyl ether	110-80-5
U115	Ethylene oxide (I,T)	75-21-8
U116	Ethylenethiourea	96-45-7
U076	Ethylidene dichloride	75-34-3
U118	Ethyl methacrylate	97-63-2
U119	Ethyl methanesulfonate	62-50-0
U120	Fluoranthene	206-44-0
U122	Formaldehyde	50-00-0
U123	Formic acid (C,T)	64-18-6
U124	Furan (I)	110-00-9
U125	2-Furancarboxaldehyde (I)	98-01-1
U147	2,5-Furandione	108-31-6
U213	Furan, tetrahydro-(I)	109-99-9
U125	Furfural (I)	98-01-1
U124	Furfuran (I)	110-00-9
U206	Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-D-	18883-66-4
U206	D-Glucose, 2-deoxy-2[[(methylnitrosoamino)-carbonyl]amino]-	18883-66-4
U126	Glycidylaldehyde	765-34-4
U163	Guanidine, N-methyl-N'-nitro-N-nitroso-	70-25-7
U127	Hexachlorobenzene	118-74-1
U128	Hexachlorobutadiene	87-68-3
U130	Hexachlorocyclopentadiene	77-47-4
U131	Hexachloroethane	67-72-1
U132	Hexachlorophene	70-30-4
U243	Hexachloropropene	1888-71-7
U133	Hydrazine (R,T)	302-01-2
U086	Hydrazine, 1,2-diethyl-	1615-80-1
U098	Hydrazine, 1,1-dimethyl-	57-14-7
U099	Hydrazine, 1,2-dimethyl-	540-73-8
U109	Hydrazine, 1,2-diphenyl-	122-66-7
U134	Hydrofluoric acid (C,T)	7664-39-3
U134	Hydrogen fluoride (C,T)	7664-39-3
U135	Hydrogen sulfide	7783-06-4
U135	Hydrogen sulfide H_2S	7783-06-4
U096	Hydroperoxide, 1-methyl-1-phenylethyl-(R)	80-15-9
U116	2-Imidazolidinethione	96-45-7
U137	Indeno(1,2,3-cd)pyrene	193-39-5
U190	1,3-Isobenzofurandione	85-44-9
U140	Isobutyl alcohol (I,T)	78-83-1
U141	Isosafrole	120-58-1
U142	Kepone	143-50-0
U143	Lasiocarpine	303-34-4
U144	Lead acetate	301-04-2
U146	Lead, bis(acetato-O)tetrahydroxytri-	1335-32-6
U145	Lead phosphate	7446-27-7
U146	Lead subacetate	1335-32-6

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U129	Lindane	58-89-9
U163	MNNG	70-25-7
U147	Maleic anhydride	108-31-6
U148	Maleic hydrazide	123-33-1
U149	Malononitrile	109-77-3
U150	Melphalan	148-82-3
U151	Mercury	7439-97-6
U152	Methacrylonitrile (I,T)	126-98-7
U092	Methanamine, N-methyl-(I)	124-40-3
U029	Methane, bromo-	74-83-9
U045	Methane, chloro-(I,T)	74-87-3
U046	Methane, chloromethoxy-	107-30-2
U068	Methane, dibromo-	74-95-3
U080	Methane, dichloro-	75-09-2
U075	Methane, dichlorodifluoro-	75-71-8
U138	Methane, iodo-	74-88-4
U119	Methanesulfonic acid, ethyl ester	62-50-0
U211	Methane, tetrachloro-	56-23-5
U153	Methanethiol (I,T)	74-93-1
U225	Methane, tribromo-	75-25-2
U044	Methane, trichloro-	67-66-3
U121	Methane, trichlorofluoro-	75-69-4
U036	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro	57-74-9
U154	Methanol (I)	67-56-1
U155	Methapyrilene	91-80-5
U142	1,3,4-Metheno-2H-cyclobuta[cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-	143-50-0
U247	Methoxychlor	72-43-5
U154	Methyl alcohol (I)	67-56-1
U029	Methyl bromide	74-83-9
U186	1-Methylbutadiene (I)	504-60-9
U045	Methyl chloride (I,T)	74-87-3
U156	Methyl chlorocarbonate (I,T)	79-22-1
U226	Methyl chloroform	71-55-6
U157	3-Methycholanthrene	56-49-5
U158	4,4'-Methylenebis(2-chloroaniline	101-14-4
U068	Methylene bromide	74-95-3
U080	Methylene chloride	75-09-2
U159	Methyl ethyl ketone (MEK) (I,T)	78-93-3
U160	Methyl ethyl ketone peroxide (R,T)	1338-23-4
U138	Methyl iodide	74-88-4
U161	Methyl isobutyl ketone (I)	108-10-1
U162	Methyl methacrylate (I,T)	80-62-6
U161	4-Methyl-2-pentanone (I)	108-10-1
U164	Methylthiouracil	56-04-2
U010	Mitomycin C	50-07-7
U059	5,12-Naphthacenedione, 8-acetyl-10-[(3-amino-2,3,6-trideoxy)-alpha-L-lyxo-hexopyranosyl)oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-, (8S-cis)-	20830-81-3
U167	1-Naphthalenamine	134-32-7
U168	2-Naphthalenamine	91-59-8
U026	Naphthalenamine, N,N'-bis(2-chloroethyl)-	494-03-1
U165	Naphthalene	91-20-3
U047	Naphthalene, 2-chloro-	91-58-7
U166	1,4-Naphthalenedione	130-15-4
U236	2,7-Naphthalenedisulfonic acid, 3,3'-[(3,3'-dimethyl[1,1'-biphenyl]-4,4'-diyl)bis(azo)bis(5-amino-4-hydroxy]-tetrasodium salt	72-57-1
U166	1,4-Naphthoquinone	130-15-4
U167	alpha-Naphthylamine	134-32-7
U168	beta-Naphthylamine	91-59-8
U217	Nitric acid, thallium(1+)salt	10102-45-1
U169	Nitrobenzene (I,T)	98-95-3
U170	p-Nitrophenol	100-02-7
U171	2-Nitropropane (I,T)	79-46-9
U172	N-Nitrosodi-n-butylamine	924-16-3
U173	N-Nitrosodiethanolamine	1116-54-7
U174	N-Nitrosodiethylamine	55-18-5
U176	N-Nitroso-N-ethylurea	759-73-9
U177	N-Nitroso-N-methylurea	684-93-5
U178	N-Nitroso-N-methylurethane	615-53-2
U179	N-Nitrosopiperidine	100-75-4
U180	N-Nitrosopyrrolidine	930-55-2
U181	5-Nitro-o-toluidine	99-55-8
U193	1,2-Oxathiolane, 2,2-dioxide	1120-71-4
U058	2H-1,3,2-Oxazaphosphorin-2-amine, N,N-bis(2-chloroethyl)tetrahydro-,2-oxide	50-18-0
U115	Oxirane (I,T)	75-21-8
U126	Oxiranecarboxyaldehyde	765-34-4
U041	Oxirane, (chloromethyl)	106-89-8
U182	Paraldehyde	123-63-7
U183	Pentachlorobenzene	608-93-5
U184	Pentachloroethane	76-01-7
U185	Pentachloronitrobenzene (PCNB)	82-68-8
See F027	Pentachlorophenol	87-86-5
U161	2-Pentanone, 4-methyl-	108-10-1
U186	1,3-Pentadiene (I)	504-60-9
U187	Phenacetin	62-44-2
U188	Phenol	108-95-2
U048	Phenol, 2-chloro-	95-57-8
U039	Phenol, 4-chloro-3-methyl-	59-50-7
U081	Phenol, 2,4-dichloro-	120-83-2
U082	Phenol, 2,6-dichloro-	87-65-0
U089	Phenol, 4,4'-(1,2-diethyl-1,2-ethenediyl)bis-, (E)-	56-53-1
U101	Phenol, 2,4-dimethyl-	105-67-9
U052	Phenol, methyl-	1319-77-3
U132	Phenol, 2,2'-methylenebis(3,4,6-trichloro-	70-30-4
U170	Phenol, 4-nitro-	100-02-7
See F027	Phenol, pentachloro-	87-86-5
See F027	Phenol, 2,3,4,6-tetrachloro-	58-90-2
See F027	Phenol, 2,4,5-trichloro-	95-95-4
See F027	Phenol, 2,4,6-trichloro-	88-06-2
U150	L-Phenylalanine, 4-[bis(2-chloroethyl) amino-	148-82-3
U145	Phosphoric acid, lead(2+) salt (2:3)	7446-27-7
U087	Phosphorodithoic acid, O,O-diethyl S-methyl ester	3288-58-2
U189	Phosphorus sulfide (R)	1314-80-3
U190	Phthalic anhydride	85-44-9
U191	2-Picoline	109-06-8
U179	Piperidine, 1-nitroso-	100-75-4
U192	Pronamide	23950-58-5
U194	1-Propanamine (I,T)	107-10-8
U111	1-Propanamine, N-nitroso-N-propyl-	621-64-7
U110	1-Propanamine, N-propyl- (I)	142-84-7
U066	Propane, 1,2-dibromo-3-chloro	96-12-8
U083	Propane, 1,2-dichloro-	78-87-5
U149	Propanedinitrile	109-77-3
U171	Propane, 2-nitro- (I,T)	79-46-9
U027	Propane, 2,2-oxybis[2-chloro-	108-60-1
U193	1,3 Propane sultone	1120-71-4
See F027	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-	93-72-1
U235	1-Propanol, 2,3-dibromo-, phosphate (3:1)	126-72-7
U140	1-Propanol, 2-methyl- (I,T)	78-83-1
U002	2-Propanone (I)	67-64-1
U007	2-Propenamide	79-06-1
U084	1-Propene, 1,3-dichloro-	542-75-6
U243	1-Propene, 1,1,2,3,3,3-hexachloro-	1888-71-7
U009	2-Propenenitrile	107-13-1
U152	2-Propenenitrile, 2-methyl- (I,T)	126-98-7
U008	2-Propenoic acid (I)	79-10-7
U113	2-Propenoic acid, ethyl ester (I)	140-88-5
U118	2-Propenoic acid, 2-methyl-, ethyl ester	97-63-2
U162	2-Propenoic acid, 2-methyl, methyl ester (I,T)	80-62-6

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See F027	Propionic acid 2-(2,4,5-trichlorophenoxy) (Silvex)	93-72-1
U194	n-Propylamine (I,T)	107-10-8
U083	Propylene dichloride	78-87-5
U148	3,6-Pyridazinedione, 1,2-dihydro-	123-33-1
U196	Pyridine	110-86-1
U191	Pyridine, 2-methyl-	109-06-8
U237	2,4-(1H,3H)-Pyrimidinedione, S-[bis(2-chloroethyl)amino]-	66-75-1
U164	4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-	56-04-2
U180	Pyrrolidine, 1-nitroso-	930-55-2
U200	Reserpine	50-55-5
U201	Resorcinol	108-46-3
U202	Saccharin, & salts	81-07-2*
U203	Safrole	94-59-7
U204	Selenious acid	7783-00-8
U204	Selenium dioxide	7783-00-8
U205	Selenium sulfide	7488-56-4
U205	Selenium sulfide SeS_2, (R,T)	7488-56-4
U015	L-Serine, diazoacetate (ester)	115-02-6
See F027	Silvex (2,4,5-TP)	93-72-1
U206	Streptozotocin	18883-66-4
U103	Sulfuric acid, dimethyl ester	77-78-1
U189	Sulfur phosphide (R)	1314-80-3
See F027	2,4,5-T	93-76-5
U207	1,2,4,5-Tetrachlorobenzene	95-94-3
U208	1,1,1,2-Tetrachloroethane	630-20-6
U209	1,1,2,2-Tetrachloroethane	79-34-5
U210	Tetrachloroethylene	127-18-4
See F027	2,3,4,6-Tetrachlorophenol	58-90-2
U213	Tetrahydrofuran (I)	109-99-9
U214	Thallium(I) acetate	563-68-8
U215	Thallium(I) carbonate	6533-73-9
U216	Thallium(I) chloride	7791-12-0
U216	Thallium chloride T1C1	7791-12-0
U217	Thallium(I) nitrate	10102-45-1
U218	Thioacetamide	62-55-5
U153	Thiomethanol (I,T)	74-93-1
U244	Thioperoxydicarbonic diamide $[(H_2n)C(S)]_2S_2$, tetramethyl-	137-26-8
U219	Thiourea	62-56-6
U244	Thiram	137-26-8
U220	Toluene	108-88-3
U221	Toluenediamine	25376-45-8
U223	Toluene diisocyanate (R,T)	26471-62-5
U328	o-Toluidinne	95-53-4
U353	p-Toluidine	106-49-0
U222	o-Toluidine hydrochloride	636-21-5
U011	1H-1,2,4-Triazol-3-amine	61-82-5
U227	1,1,2-Trichloroethane	79-00-5
U228	Trichloroethylene	79-01-6
U121	Trichloromonofluoromethane	75-69-4
See F027	2,4,5-Trichlorophenol	95-95-4
See F027	2,4,6-Trichlorophenol	88-06-2
See F027	2,4,5-Trichlorophenoxyacetic acid (2,4,5-T)	93-76-5
See F027	2,4,5-Trichlorophenoxypropionic acid, salts and esters (Silvex)	93-72-1*
U234	1,3,5-Trinitrobenzene (R,T)	99-35-4
U182	1,3,5-Trioxane, 2,4,6-trimethyl-	123-63-7
U235	Tris(2,3-dibromopropyl) phosphate	126-72-7
U236	Trypan blue	72-57-1
U237	Uracil mustard	66-75-1
U176	Urea, N-ethyl-N-nitroso-	759-73-9
U177	Urea, N-methyl-N-nitroso-	684-93-5
U043	Vinyl chloride	75-01-4
U248	Warfarin, & salts, when present at concentrations of 0.3% or less	81-81-2*
U239	Xylene(I)	1330-20-7
U200	Yohimban-16-carboxylic acid, 11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl) oxy]-, methyl ester, [3beta, 16beta, 17alpha, 18beta,20alpha)-	50-55-5
U249	Zinc phosphide Zn_3P_2, when present at concentrations of 10% or less	1314-84-7

*CAS Number is given for the parent compound only.

7. (No change.)

7:26-8.16 Hazardous constituents

(a) Waste streams containing the hazardous constituents listed below, classified as hazardous waste by the generator or the Department pursuant to N.J.A.C. 7:26-8.6 and 8.7, shall be manifested with the corresponding waste code numbers. Test methods approved by the Department shall be used in determining whether the waste in question contains a given hazardous constituent. (**NOTE: The abbreviation N.O.S. signifies those members of the general class "not otherwise specified" by name in this listing). These wastes and their corresponding Hazardous Waste Numbers and Chemical Abstracts Service (CAS) Registry Numbers are:**

NJ Hazardous Waste Number	Substance	Chemical Abstracts Number
*[C102	(Acetato) phenylmercury]*	
C103	*[Acetonotril]* **Acetonitrile**	75-05-8
*[C463	Acetophenome]*	
C104	**3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin and salts**	81-81-2*
C463	**Acetophenone**	98-86-2
C105	2-Acetylaminefluarone	53-96-3
C106	Acetyl chloride	75-36-5
C107	1-Acetyl-2-thiourea	591-08-2
C108	Acrolein	107-02-8
C109	Acrylamide	79-06-1
C110	Acrylonitrile	107-13-1
C111	Aflatoxins	1402-68-2*
C324	**Aldicarb**	116-06-3
C112	Aldrin	309-00-2
C113	Allyl alcohol	107-18-5
C497	**Allyl chloride**	107-05-1
C114	Aluminum phosphide	20859-73-8
C115	4-Aminobiphenyl	92-67-1
*[C116	6-Amino-1,1a,2,8,8a,8b-hexahydro-8-(hydroxy-methyl)-8a-methoxy-5-methylcarbamate azirino- (2',3':3,4)pyrrolo (1,2-a)indole-4,7-dione (ester), (Mitomycin C)]*	
C117	*[5-(Aminomethyl)-3-isoxazolol]* **5-V(Aminomethyl) 3-isoxazolol**	2763-96-4
C118	4-Aminopyridine	504-24-5
C119	Amitrole	61-82-5
C457	**Ammonium Vanadate**	7803-55-6
C120	Aniline	62-53-3
C121	Antimony and compounds, N.O.S.*[*]*	7440-36-0*
C122	Aramite	140-57-8
C123	Arsenic and compounds, N.O.S.	7440-38-2*
C124	Arsenic acid	7778-39-2*
C125	Arsenic pentoxide	1303-28-2
C126	Arsenic trioxide	1327-53-3
C127	Auramine	492-80-8
C128	Azaserine	115-02-6
C129	Barium and compounds, N.O.S.	7440-39-3*
C130	Barium cyanide	542-62-1
C131	Benz[c]acridine	225-51-4
C464	**Benzal chloride**	98-87-3

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C132	Benz[a]anthracene	56-55-3
C133	Benzene	71-43-2
C464	Benzene, (dichloromethyl)	98-87-3
C500	Benzene, 2-amino-1-1 methyl *[(0-Toluidine)]*	
C501	Benzene, 4-amino-1 methyl *[(p-Toluidine)]*	
C134	Benzenearsonic acid	98-05-5
C149	**1,2-Benzenedicarboxylic acid, bis (2-ethylhexyl) ester**	**117-81-7**
C135	Benzenethiol	108-98-5
C136	Benzidine	92-87-5
C138	*[Benzo[b]flouranthene]* **Benzo[b]fluoranthene**	205-99-2
C139	*[Benzo[j]flouranthene]* **Benzo[j]fluoranthene**	205-82-3
C140	Benzo[a]pyrene	50-32-8
C519	**p-Benzoquinone**	**106-51-4**
C141	Benzotrichloride	98-07-7
C142	Benzyl chloride	100-44-7
C143	Beryllium and compounds, N.O.S.	7440-41-7*
C144	*[Bis(2-chloroethozy)methane]* **Bis(2-chloroethoxy) Methane**	111-91-1
C145	Bis(2-chloroethyl) ether	111-44-4
C146	N,N'-Bis(2-chloroethyl) -2-naphthylamine	494-03-1
C147	Bis(2-chloroisopropyl) ether	108-60-1
C148	Bis(chloromethyl)ether	542-88-1
C149	*[Bis(2-ethylhexy) phthalate]* **Bis(2-ethylhexyl) phthalate**	117-81-7
C150	Bromoacetone	598-31-2
C438	**Bromoform**	**75-25-2**
C151	Bromomethane	74-83-9
C152	4-Bromophenyl phenyl ether	101-55-3
C153	Brucine	357-57-3
C172	**1,3,-Butadiene**	**126-99-8**
C154	2-Butanone, **peroxide**	1338-23-4
C465	Butyl benzl phthalate	85-68-7
C156	2-sec-Butyl-4,6-dinitrophenol *[(DNBP)]*	88-85-7
C476	**Cacodylic acid**	**75-60-5**
C157	Cadmium and compounds, N.O.S.	7440-43-9*
C158	Calcium chromate	13765-19-0
C159	Calcium cyanide	592-01-8
C456	**Carbamate**	**51-79-6**
C456	**Carbamic acid, ethyl ester**	**51-79-6**
C160	Carbon disulfide	75-15-0
C466	Carbon *[oxyflouride]* **oxyfluoride** chloral	353-50-4
C416	**Carbon tetrachloride**	**56-23-5**
C508	**Chloral**	**75-87-6**
C161	Chlorambucil	305-03-3
C162	Chlordane (alpha and gamma isomers)	57-74-9*
C163	Chlorinated benzenes, N.O.S.	**
C164	Chlorinated ethane, N.O.S.	**
C467	Chlorinated *[flourocarbons,]* **fluorocarbons,** N.O.S.	**
C165	Chlorianted *[napthalene,]* **naphthalene,** N.O.S.	**
C166	Chlorinated phenol, N.O.S.	**
C146	**Chlornaphazine**	**494-03-1**
C167	Chloroacetaldehyde	107-20-0
C168	Chloroalkyl ethers, N.O.S.	**
C169	p-Chloroaniline	106-47-8
C170	Chlorobenzene	108-90-7
C171	Chlorobenzilate	510-15-6
C172	2-Chloro-1,3-butadiene *[(Chloroprene)]*	126-99-8
C173	p-Chloro-m-cresol	59-50-7
C174	*[1-Chloro-2,3-epoxybutane]* **1-Chloro-2,3-epoxypropane**	106-89-8
C175	2-Chloroethyl vinyl ether	110-75-8
C176	Chloroform	67-66-3
C177	Chloromethane	74-87-3
C178	Chloromethyl methyl ether	107-30-2
C179	*[2-Chlorononaphthalene]* **2-chloronaphthalene**	91-58-7
C180	2-Chlorophenol	95-57-8
C181	1-(o-Chlorophenyl)thiourea	5344-82-1
C172	**Chloroprene**	**126-99-8**
C497	**3-Chloropropene**	**107-05-1**
C182	3-Chloropropionitrile	542-76-7
*[C497	3-Chloropropene (allyl chloride)]*	
C183	Chlorotoluene, N.O.S.	**
C184	Chromium and compounds, N.O.S.	7440-47-3*
C185	Chrysene	218-01-9
C186	Citrus*[red]* **Red** No. 2	6358-53-8
C509	**Coal tars**	**8007-45-2**
C187	Copper cyanide	544-92-3
C188	**Creosote, coal tar**	**8001-58-9**
C468	Cresol	1319-77-3
*[C188	Creosote]*	
C189	Crotonaldehyde	4170-30-3
C190	Cyanides (soluble salts and complexes), N.O.S.	**
C191	Cyanogen	460-19-5
C192	Cyanogen bromide	506-68-3
C193	Cyanogen chloride	506-77-4
C194	Cycasin	14901-08-7
C195	2-Cyclohexyl-4,6-dinitrophenol	131-89-5
C196	Cyclophosphamide	50-18-0
C223	**2,4-D, salts and esters**	**94-75-7***
C197	Daunomycin	20830-81-3
C198	DDD	72-54-8
C199	DDE	72-55-9
C200	DDT	50-29-3
C201	Diallate	2303-16-4
C202	*[Dibenz acridine]* **Dibenz[a,h]acridine**	226-36-8
C203	*[Dibenz acridine]* **Dibenz[a,j]acridine**	224-42-0
C204	*[Dibenz anthracine]* **Dibenz[a,h]anthracene**	53-70-3
C205	*[7H-Dibenzo carbozole]* **7H-Dibenzo [c,g] carbazole**	194-59-2
C206	*[Dibenzo pyrene]* **Dibenzo[a,e]pyrene**	192-65-4
C207	*[Dibenzo pyrene]* **Dibenzo[a,h]pyrene**	189-64-0
C208	*[Dibenzo pyrene]* **Dibenzo[a,i]pyrene**	189-55-9
C209	1,2-Dibromo-3-chloropropane	96-12-8
C210	1,2-Dibromoethane	106-93-4
C211	Dibromomethane	74-95-3
C212	Di-n-butyl phthalate	84-74-2
C493	**m-Dichlorobenzene**	**541-73-1**
C492	o-Dichlorobenzene	95-50-1
*[C493	m-Dichlorobenzene]*	
C494	p-Dichlorobenzene	106-46-7
*[C469	1,4-Dichloro-2-butene]*	
C213	Dichlorobenzene, N.O.S.	25321-22-6
C214	*[3,3'-Dichlorobenzidine]* **3,3'-Dichlorobenzidine**	91-94-1
C469	**1,4-Dichloro-2-butene**	**764-41-0**
C470	*[Dichlorodiflouromethane]* **Dichlorodifluoromethane**	75-71-8
C215	1,1-Dichloroethane	75-34-3
C216	1,2-Dichloroethane	107-06-2
C217	*[trans-1,2-Dichloroethane]* **trans-1,2-Dichloroethene**	156-60-5
C145	**Dichloroethyl ether**	**11-44-4**
*[C218	Dichloroethylene, N.O.S.]*	
C219	1,1-Dichloroethylene	75-35-4
C217	**1,2-Dichloroethylene**	**156-60-5**
C218	**Dichloroethylene, N.O.S.**	**25323-30-2**
C147	**Dichloroisoprophyl ether**	**108-60-1**
C148	**Dichloromethyl ester**	**542-88-1**
C220	Dichloromethane	75-09-2
C221	2,4-Dichlorophenol	120-83-2
C222	2,6-Dichlorophenol	87-65-0
C223	2,4-Dichlorophenoxyacetic acid (2,4-D), **salts and esters**	94-75-7*
*[C224	Dichloropropane, N.O.S.]*	
C225	Dichlorophenylarsine	696-28-6
C226	1,2-Dichloropropane	78-87-5
C224	**Dichloropropane, N.O.S.**	**26638-19-7**

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C227	Dichloropropanol, N.O.S.	26545-73-3
C228	Dichloropropene, N.O.S.	26952-23-8
C229	1,3-Dichloropropene	542-75-6
C230	Dieldrin	60-57-1
C471	Diepoxybutane	1464-53-5
C232	Diethylarsine	692-42-2
C263	**1,4-Diethyleneoxide**	123-91-1
C234	1,2-Diethylhydrazine	1615-80-1
C234	**N,N-Diethylhydrazine**	1615-80-1
C235	*[O,O-Diethyl S-methyl ester phosphorodithioic acid]* **o,o-Diethyl S-methyl phosphorodithioate**	3288-58-2
C236	*[O,O-Diethylphosphoric acid, O-p-nitrophenylester]* **o,o-Diethylphosphoric acid, o-p-nitrophenyl ester**	311-45-5
C236	**Diethyl-p-nitrophenylphosphate**	311-45-5
C237	Diethyl phthalate	84-66-2
C238	*[O,O-Diethyl O-(2-pyrazinyl)]* **o,o-Diethyl-o-(2-pyrazinyl)** phosphorothioate	297-97-2
C239	Diethylstilbestrol	56-53-1
C240	Dihydrosafrole	94-58-6
C241	*[3,4-Dihydroxy-alpha-(methylamino)-methyl benzyl]* **3,4-Dihydroxy-alpha-[(methylamino)-methyl] benzyl** alcohol **(Epinephrine)**	51-43-4
C242	*[Di-isopropylflourophosphate]* **Diisopropyl fluorophosphate** (DFP)	55-91-4
C293	**1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-, (1 alpha, 4 alpha, 4a beta, 5 beta, 8 beta, 8abeta)-**	465-73-6
C243	Dimethoate	60-51-5
C244	*[3,3'-Dimethoxybenzidine]* **3,3'-Dimethoxybenzidine**	119-90-4
C245	p-Dimethylaminoazobenzene	60-11-7
C246	*[7, 12-Dimethylbenz anthracene]* **7,12-Dimethylbenz[a]anthracene**	57-97-6
C247	*[3,3'-Dimethylbenzidine]* **3,3'-Dimethylbenzidine**	119-93-7
C248	Dimethylcarbamoyl chloride	79-44-7
C249	*[1,1-dimethylhydrazine]* **1,1-Dimethylhydrazine**	57-14-7
C250	1,2-Dimethylhydrazine	540-73-8
C251	*[3,3-Dimethyl-1-(methylthio)-2-butanone-o-((methylamino)carbonyl)]* **3,3-Dimethyl-1-(methylthio)-2-butanone O-(methylamino)carbonyl** oxime **(Thiofanox)**	39196-18-4
C253	alpha,alpha-Dimethylphenethylamine	122-09-8
C254	2,4-Dimethylphenol	105-67-9
C255	Dimethyl phthalate	131-11-3
C256	Dimethyl sulfate	77-78-1
C257	Dinitrobenzene, N.O.S.	25154-54-5
C258	4,6-Dinitro-o-cresol and salts	534-52-1*
C259	2,4-Dinitrophenol	51-28-5
C260	2,4-Dinitrotoluene	121-14-2
C261	2,6-Dinitrotoluene	606-20-2
C156	**Dinoseb**	88-85-7
C262	Di-n-octyl phthalate	117-84-0
C263	1,4-Dioxane	123-91-1
C510	**Diphenylamine**	122-39-4
C265	1,2-Diphenylhydrazine	122-66-7
C266	Di-n-propylnitrosamine	621-64-7
C267	Disulfoton	298-04-4
C268	2,4-Dithiobiuret	541-53-7
C156	**DNBP**	88-85-7
C269	Endosulfan	115-29-7
C270	Endrin and metabolites	72-20-8*
C174	**Epichlorohydrin**	106-89-8
C241	**Epinephrine**	51-43-4
C210	**Ethane, 1,2,-dibromo-**	106-93-4
C215	**Ethane, 1,1-dichloro-**	75-34-3
C216	**Ethane, 1,2-dichloro-**	107-06-2
C144	**Ethane, 1,1'-[methylenebis(oxy)] bis[2-chloro**	111-91-1
C145	**Ethane, 1,1'-oxybis (2-chloro-**	111-44-4
C506	**Ethanol, 2-ethoxy**	110-80-5
C217	**Ethene, trans-1,2-dichloro-**	156-60-5
C272	Ethyl cyanide	107-12-0
C274	*[Ethylenebisdithiocarbamac]* **Ethylenebisdithiocarbamic** acid, salts and esters	111-54-6*
C216	**Ethylene chloride**	107-06-2
C210	**Ethylene dibromide**	106-93-4
C215	**Ethylene dicholride**	75-34-3
C506	**Ethylene glycol monoethyl ether**	110-80-5
C275	Ethyleneimine	151-56-4
C276	Ethylene oxide	75-21-8
C277	Ethylenethiourea	96-45-7
C472	Ethyl methacrylate	97-63-2
C278	Ethyl methanesulfonate	62-50-0
*[506	Ethylene Glycol monoethylether (Ethanol, 2 ethoxy)]*	
C498	**Famphur**	52-85-7
*[C473	Formic acid]*	
C279	*[Flouranthene]* **Fluoranthene**	206-44-0
C280	*[Flourine]* **Fluorine**	7782-41-4
C281	*[2-Flouracetamide]* **2-Fluoroacetamide**	640-19-7
C282	*[Flouroacetic]* **Fluoroacetic** acid, sodium salt	62-74-8
C283	Formaldehyde	50-00-0
C473	**Formic acid**	64-18-6
C284	*[Glycidyladehyde]* **Glycidylaldehyde**	765-34-4
C285	Halomethane, N.O.S.	**
C286	Heptachlor	76-44-8
C287	Heptachlor epoxide (alpha, beta, and gamma isomers)	1024-57-3*
C288	Hexachlorobenzene	118-74-1
C289	Hexachlorobutadiene	87-68-3
C290	Hexachlorocyclohexane (all isomers)	58-89-9*
C291	Hexachlorocyclopentadiene	77-47-4
C474	Hexachlorodibenzo-p-dioxins	**
C475	Hexachlorodibenzofurans	**
C292	Hexachloroethane	67-72-1
C293	*[1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8-endo, endo-dimethanonaphthalene]* **1,2,3,4,10,19-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8-endo, endo-dimethanonaphthalene**	465-73-6
C294	Hexachlorophene	70-30-4
C295	Hexachloropropene	1888-71-7
C296	Hexaethyl tetraphosphate	757-58-4
C297	Hydrazine	302-01-2
C298	Hydrocyanic acid	74-90-8
C298	**Hydrogen cyanide**	74-90-8
C511	**Hydrogen fluoride**	7664-39-3
C299	**Hydrogen sulfide**	7783-06-4
C476	Hydroxydimethylarsine oxide	75-60-5
*[C299	Hydrogen sulfide]*	
C300	*[Indeno (1,2,3-c,d)pyrene]* **Indeno(1,2,3-cd)pyrene**	193-39-5
C301	Iodomethane	74-88-4
C477	Isobutyl alcohol	78-83-1
C302	Isocyanic acid, methyl ester	624-83-9
C293	**Isodrin**	465-73-6
C303	Isosafrole	120-58-1
C304	Kepone	143-50-0
C305	Lasiocarpine	303-34-4
C307	**Lead acetate**	301-04-2
C306	Lead and compounds, N.O.S.	7439-92-1*
*[C307	Lead acetate]*	
C308	Lead phosphate	7446-27-7
C309	Lead subacetate	1335-32-6
C290	**Lindane**	58-89-9
C310	Maleic anhydride	108-31-6
C478	Maleic hydrazide	123-33-1
C311	Malononitrile	109-77-3

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C312	Melphalan	**148-82-3**
C313	Mercury and compounds, N.O.S.	**7439-97-6***
C479	Mercury fulminate	**628-86-4**
C480	Methacrylonitrile	**126-98-7**
C211	**Methane, dibromo-**	**74-95-3**
C220	**Methane, dichloro-**	**75-09-2**
C148	**Methane, oxybis(chloro-**	**542-88-1**
C301	**Methane, iodo-**	**74-88-4**
C314	Methapyrilene	**91-80-5**
C315	Methomyl	**16752-77-5**
C513	**Methoxychlor**	**72-43-5**
C316	2-Methylaziridine	**75-55-8**
*[C317	3-Methylcholanthrene]*	
C151	**Methyl bromide**	**74-83-9**
C177	**Methyl chloride**	**74-87-3**
C481	Methyl chlorocarbonate	**79-22-1**
C440	**Methylchloroform**	**71-55-6**
C317	**3-Methylcholanthrene**	**56-49-5**
C318	*[4,4'-Methylene-bis-(2-chloroaniline)]* **4,4'-Methylene-bis-(2-chloroaniline)**	**101-14-4**
C211	**Methalene bromide**	**74-95-3**
C220	**Methylene chloride**	**75-09-2**
C319	Methyl ethyl ketone (MEK)	**78-93-3**
C319	**Methyl ethylketone Peroxide**	**78-93-3**
C320	Methyl hydrazine	**60-34-4**
C302	**Methyl isocyanate**	**624-83-9**
C321	*[2-methyllactonitrile]* **2-Methyllactonitrile**	**75-86-5**
C322	Methyl methacrylate	**80-62-6**
C323	Methyl methanesulfonate	**66-27-3**
C324	*[2-Methyl-2-(methylthio) propionaldehyde-o-(methylcarbonyl) oxime]* **2-Methyl-2-(methylthio) propionaldehyde-o-(methylcarbamoyl)oxime**	**116-06-3**
C325	*[N-Methyl-N'-nitro-N-nitrosoguanidine]* **N-Methyl-N'-nitro-N-nitrosoguanidine**	**70-25-7**
C326	Methyl parathion	**298-00-0**
C327	Methylthiouracil	**56-04-2**
C116	**Mitomycin C**	**50-07-7**
C325	**MNNG**	**70-25-7**
C328	Mustard gas	**505-60-2**
C329	Naphthalene	**91-20-3**
C330	1,4-Naphthoquinone	**130-15-4**
C331	1-Naphthylamine	**134-32-7**
C331	**alpha-Naphthylamine**	**134-32-7**
C332	2-Naphthylamine	**91-59-8**
C332	**beta-Naphthylamine**	**91-59-8**
C333	1-Naphthyl-2-thiourea	**86-88-4**
C333	**alpha-Naphthylthiourea**	**86-88-4**
C334	Nickel and compounds, N.O.S.	**7440-02-0***
C335	Nickel carbonyl	**13463-39-3**
C336	Nickel cyanide	**557-19-7**
C337	Nicotine and salts	**54-11-5***
C338	Nitric oxide	**10102-43-9**
C339	p-Nitroaniline	**100-01-6**
C340	Nitrobenzene	**98-95-3**
C341	Nitrogen dioxide	**10102-44-0**
C342	Nitrogen mustard and hydrochloride salt	**51-75-2***
C343	Nitrogen mustard N-oxide and hydrochloride salt	**126-85-2***
C346	Nitroglycerine	**55-63-0**
C347	4-Nitrophenol	**100-02-7**
C507	**2-Nitropropane (Propane, 2-nitro)**	**79-46-9**
C348	*[4-Nitroquinoline-1-oxide]* **4-Nitroquinoline,1-oxide**	**56-57-5**
C349	*[Nitrisamine,]* **Nitrosamine,** N.O.S.	**35576-91-1**
*[507	2-Nitropropane(propane, 2-nitro)]*	
C350	*[N-Nitrosodi-N-butylamine]* **N-Nitrosodi-n-butylamine**	**924-16-3**
C351	N-Nitrosodiethanolamine	**1116-54-7**
C352	N-Nitrosodiethylamine	**55-18-5**
C353	N-Nitrosodimethylamine	**62-75-9**
C356	N-Nitroso-N-ethylurea	**759-73-9**
C357	N-Nitrosomethylethylamine	**10595-95-6**
C358	N-Nitroso-N-methylurea	**684-93-5**
C359	N-Nitroso-N-methylurethane	**615-53-2**
C360	N-Nitrosomethylvinylamine	**4549-40-0**
C361	N-Nitrosomorpholine	**59-89-2**
C362	N-Nitrosonornicotine	**16543-55-8**
C363	N-Nitrosopiperidine	**100-75-4**
C482	N-Nitrosopyrolidine	**930-55-2**
C365	N-Nitrososarcosine	**13256-22-9**
C366	5-Nitro-o-toluidine	**99-55-8**
C367	Octamethylpyrophosphoramide	**152-16-9**
C369	Osmium tetroxide	**20816-12-0**
C370	*[7-Oxabicyclo heptane-2,3-dicarboxylic acid]* **7-Oxabicyclo(2.2.1) heptane-2,3-dicarboxylic acid**	**145-73-3**
C174	**Oxirane, 2-(chloromethyl)-**	**106-89-3**
C483	Paraldehyde	**123-63-7**
C371	Parathion	**56-38-2**
C374	**PCNB**	**82-68-8**
C372	Pentachlorobenzene	**608-93-5**
C484	Pentachlorodibenzo-p-dioxins	**
C485	Pentachlorodibenzofurans	**
C373	Pentachloroethane	**76-01-7**
C374	Pentachloronitrobenzene *[(PCNB)]*	**82-68-8**
C375	Pentachlorphenol	**87-86-5**
C376	Phenacetin	**62-44-2**
C377	Phenol	**108-95-2**
C514	**Phenylenediamine**	**25265-76-3**
[C380]	**C102** Phenylmercury acetate	**62-38-4**
C381	**Phenylthiourea**	**103-85-5**
C381	N-Phenylthiourea	**103-85-5**
C384	**Phorate**	**298-02-2**
C382	*[Phosogene]* **Phosgene**	**75-44-5**
C383	Phosphine	**7803-51-2**
C384	Phosphorothioic acid, *[O,O-diethyl-S-[(ethyltho)methyl]* **o,o-diethyl S-(ethylthio)methyl ester (Phorate)**	**298-02-2**
C498	Phosphorothioic acid, *[O,O-dimethyl]* **o,o-dimethyl,** ester,*[O-ester]* **o-ester** with *[N,N-dimethyl]* **p-hydroxy-N,N-dimethyl** benzene sulfonamide	**52-85-7**
C385	Phthalic acid esters, N.O.S.	**
C386	Phthalic anhydride	**85-44-9**
C517	**2-Picoline**	**109-06-8**
C387	Polychlorinated biphenyl, N.O.S.	**
C388	Potassium cyanide	**151-50-8**
C389	Potassium silver cyanide	**506-61-6**
C390	Pronamide	**23950-58-5**
C147	**Propane, 2,2'-oxybis[1-chloro**	**108-60-1**
C392	*[1,2-Propane]* **1,3-Propane** sultone	**1120-71-4**
C395	**Propargyl alcohol**	**107-19-7**
C486	n-Propylamine	**107-10-8**
C226	**Propylene dichloride**	**78-87-5**
C316	**1,2-Propylenimine**	**75-55-8**
C394	Propylthiouracil	**51-52-5**
C395	2-Propyn-1-ol	**107-19-7**
C396	Pyridine	**110-86-1**
C397	Reserpine	**50-55-5**
C518	**Resorcinol**	**108-46-3**
C398	Saccharin **and salts**	**81-07-2***
C399	Safrole	**94-59-7**
C400	Selenious acid	**7783-00-8**
C401	Selenium and compounds, N.O.S.	**7782-49-2***
C400	**Selenium dioxide**	**7783-008**
C402	Selenium sulfide	**7488-56-4**
C403	Selenourea	**630-10-4**
C404	Silver and compounds, N.O.S.	**7440-22-4***
C405	Silver cyanide	**506-64-9**
C447	**Silvex**	**93-72-1**
C406	Sodium cyanide	**143-33-9**
C407	Streptozotocin	**18883-66-4**
C408	Strontium sulfide	**1314-96-1**

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C409	Strychnine and salts	**57-24-9***
C446	**2,4,5-T**	**93-76-5**
C441	**TCCD**	**1746-01-6**
C447	**2,4,5-TP**	**93-72-1**
C410	1,2,4,5-Tetrachlorobenzene	**95-94-3**
C411	**2,3,7,8-Tetrachlorodibenzo -p-dioxin (TCDD)**	**1746-01-6**
C487	**Tetrachlorodibenzo-p-dioxins**	**
C488	**Tetrachlorodibenzofurans**	**
C412	**Tetrachloroethane, N.O.S.**	**25322-20-7**
C413	1,1,1,2-Tetrachloroethane	**630-20-6**
C414	1,1,2,2-Tetrachloroethane	**79-34-5**
C415	Tetrachloroethene *[(Tetrachloroethylene)]*	**127-18-4**
C415	**Tetrachloroethylene**	**127-18-4**
C416	Tetrachloromethane	**56-23-5**
C417	2,3,4,6-Tetrachlorophenol	**58-90-2**
C418	*[Tetraethylidithiopyrophosphate]*	
	Tetraethylidithiopyrophosphate	**3689-24-5**
C419	Tetraethyl lead	**78-00-2**
C420	**Tetraethyl pyrophosphate**	**107-49-3**
C489	Tetranitromethane	**509-14-8**
*[C420	Tetraethylpyrophosphate]*	
C422	**Thallic oxide**	**1314-32-5**
C423	**Thallium(I) acetate**	**563-68-8**
C421	Thallium and compounds, N.O.S.	**7440-28-0***
*[C422	Thallic oxide]*	
*[C423	Thallium(I) acetate]*	
C424	Thallium(I) carbonate	**6533-73-9**
C425	Thallium(I) chloride	**7791-12-0**
C426	Thallium(I) nitrate	**10102-45-1**
C427	Thallium selenite	**12039-52-0**
C428	Thallium(I) sulfate	**7446-18-6**
C429	Thioacetamide	**62-55-5**
C251	**Thiofanox**	**39196-18-4**
C520	**Thiomethanol**	**74-93-1**
C135	**Thiophenol**	**108-98-5**
C430	Thiosemicarbazide	**79-19-6**
C431	Thiourea	**62-56-6**
C432	Thiuram	**137-26-8**
C433	Toluene	**108-88-3**
C502	2,4-Toluenediamine	**95-80-7**
C503	2,6-Toluenediamine	**823-40-5**
C504	3,4-Toluenediamine	**496-72-0**
C505	Toluenediamine, N.O.S.	**25376-45-8**
*[C435	o-Toluidine hydrochloride]*	
C436	*[Tolylene]* **Toluene** diisocyanate	**26471-62-5**
C500	**o-Toluidine**	**95-53-4**
C435	**o-Toluidine hydrochloride**	**636-21-5**
C501	**p-Toluidine**	**106-49-0**
*[C436	Tolylene diisocyanate]*	
C437	Toxophene	**8001-35-2**
C447	**2,4,5-TP**	**93-72-1**
C438	Tribromomethane	**75-25-2**
C439	1,2,4-Trichlorobenzene	**120-82-1**
C440	1,1,1-Trichloroethane	**71-55-6**
C441	1,1,2-Trichloroethane	**79-00-5**
C442	Trichloroethene *[(Trichloroethylene)]*	**79-01-6**
C442	**Trichloroethylene**	**79-01-6**
C443	Trichloromethanethiol	**75-70-7**
C490	*[Trichloromonofluoromethane]*	
	Trichloromonofluoromethane	**75-69-4**
C444	2,4,5-Trichlorophenol	**95-95-4**
C445	2,4,6-Trichlorophenol	**88-06-2**
C446	2,4,5-Trichlorophenoxyacetic acid (2,4,5-T)	**93-76-5**
C447	2,4,5-Trichlorophenoxypropionic acid	
	[(2,4,5-TP) (Silvex)]	**93-72-1**
C448	Trichloropropane, N.O.S.	**25735-29-9**
C449	1,2,3-Trichloropropane	**96-18-4**
C450	*[O,O,O-Triethyl]***o,o,o-Triethyl**	
	phosphorothioate	**126-68-1**
C451	Trinitrobenzene	**99-35-4**
C452	*[Tris(l-azridinyl) phosphine]* **Tris(l-aziridinyl)phosphine** sulfide	**52-24-4**
C453	Tris(2,3-dibromopropyl) phosphate	**126-72-7**
C491	Trypan blue	**72-57-1**
C455	Uracil mustard	**66-75-1**
*[C456	Urethan]*	
C457	Vanadic acid, ammonium salt	**7803-55-6**
C458	Vanadium pentoxide *[(dust)]*	**1314-62-1**
C459	Vinyl chloride	**75-01-4**
C104	**Warfarin and salts**	**81-81-2***
C461	Zinc cyanide	**557-21-1**
C462	Zinc phosphide	**1314-84-7**
*[C487	Tetrachlorodibenzo-p-dioxins	
C488	Tetrachlorodibenzofurans	
C411	2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCCD)	
C412	Tetrachloroethane, N.O.S.]*	

***CAS Number is given for the parent compound only.**
****More than one CAS Number applies.**

(b) (No change.)

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RULE ADOPTIONS

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

License Fees, Assessments and Examination Charges

Adopted New Rules: N.J.A.C. 3:1-6.1, 6.6 and 7.6

Adopted Amendments: N.J.A.C. 3:1-6.1, 6.2 and 7.4; 3:6-14.2; 3:18-10.1; 3:23-2.1 and 3:38-1.1

Adopted Repeal: N.J.A.C. 3:13-3.2

Proposed: February 4, 1991 at 23 N.J.R. 254(a).

Adopted: March 13, 1991 by Jeff Connor, Commissioner, Department of Banking.

Filed: March 15, 1991 as R.1991 d.195, **without change.**

Authority: N.J.S.A. 17:1-8 and 8.1; 17:9A-334, 335 and 375; 17:10-3, 9 and 23; 17:11A-38 and 45(g); 17:11B-5, 11 and 13; 17:12B-226; 17:15-1 and 4; 17:15A-4 and 26; 17:15B-7, 14 and 17; 17:16C-7, 8 and 82; 17:16D-4, 7 and 8; 45:22-4 and 11.

Effective Date: April 15, 1991.

Expiration Dates: N.J.A.C. 3:1, January 4, 1996.
N.J.A.C. 3:6, March 1, 1996.
N.J.A.C. 3:18, January 19, 1993.
N.J.A.C. 3:23, July 6, 1992.
N.J.A.C. 3:38, October 5, 1992.

Summary of Public Comments and Agency Responses:

The Department received comments from the following persons:

1. Robert C. Forrey, Executive Vice President, New Jersey Bankers Association.
2. James R. Silkensen, Executive Vice President, New Jersey Savings League.
3. Sherman T. Brewer, Jr., Vice President, Merrill Lynch.
4. William F. Bedle, Chairman of the Board, Manchester Trust.
5. Ronald D. Watson, Chief Executive Officer, Custodial Trust Company.

A summary of the comments and agency responses follows:

COMMENT: Since the costs associated with all examinations are similar, the per diem fee charged for all institutions should be the same.

RESPONSE: The Department proposed a higher per diem examination fee for licensees and credit unions because they are not subject to the assessments imposed on banks, savings banks and savings and loan associations. In this way, the financial costs of the Department will be shared more evenly among the institutions it regulates.

COMMENT: Will a new report need to be filed to assess trust assets?

RESPONSE: The assets will be assessed based on a report of trust assets which is regularly filed with the Department. No new filings will be required.

COMMENT: The burden of these increased fees will fall disproportionately upon trust companies and commercial banks with large trust departments. This is particularly true with non-discretionary trust assets, where the income margin is narrow. Accordingly, the Department should not assess these types of assets. In the alternative, the Department could break down the total trust assets assessed into discretionary trust assets and non-discretionary trust assets, and assess the non-discretionary trust assets at a lower rate.

RESPONSE: The Department is concerned that the increased assessments will fall disproportionately on a few trust companies, and not on the companies that require the most supervision. Accordingly, the Department, in a proposal filed concurrently with this adoption, proposes to reduce the assessment on trust assets (see the proposal in this Register). To recoup the lost revenue and to account for the expertise necessary to examine trust companies, the concurrent proposal increases the per diem examination charge on trust companies and trust departments from $300.00 to $325.00. The Department expects these proposed changes in the rules to be effective before the next assessment period.

COMMENT: The Department should consider basing the assessment upon the degree of risk associated with assets. In this way, the burden would be placed more on those institutions requiring greater supervision. As an alternative, the Department should consider creating a cap on the assessment based on a multiple (such as four) of the examination charge.

RESPONSE: The Department agrees that those institutions which cost the most to supervise should be charged more. However, the Department is concerned about complicating the assessment procedure. Creating a more complicated formula would impose compliance costs on the industry and would increase administrative costs of the Department.

In general, institutions with more assets including trust assets are more costly to supervise. Assessing non-discretionary trust assets at a reduced rate is consistent with this approach, because non-discretionary assets are also generally easier to supervise. In the proposal published in this issue of the Register, the Department will differentiate between discretionary and non-discretionary trust assets, and will impose a lower assessment on the non-discretionary trust assets. In addition, it will propose a lower relative assessment on those institutions with greater amounts of trust assets.

COMMENT: Credit unions should be assessed like banks, savings banks and savings and loans.

RESPONSE: The Department agrees that there is merit in assessing credit unions along with other depositories. However, the Department feels that increasing the per diem examination charge of credit unions to $325.00 per day will achieve essentially the same financial result. The Department may consider extending the assessment to credit unions in a future proposal.

COMMENT: Three governmental agencies now supervise New Jersey chartered savings and loan associations: (1) the New Jersey Department of Banking; (2) the Office of Thrift Supervision; and (3) the Federal Deposit Insurance Corporation. Because of this overlapping supervision, consideration should be given to repealing the current requirement that the Department examine an association every two years. Instead, the Department should periodically accept a report from the Office of Thrift Supervision or the Federal Deposit Insurance Corporation.

RESPONSE: Pursuant to N.J.S.A. 17:12B-172, the Department must examine each association at least every two years. Accordingly, any change to this requirement must be made by the Legislature.

Full text of the adopted new rules and amendments follows.

3:1-6.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"Holding company" means a bank holding company or a savings and loan holding company under the supervision of the Department.

"Licensee" means a person other than a bank, savings bank, savings and loan association or credit union which is regulated or supervised by the Department.

"Trust assets" means assets held in trust, as reported to the Department in the report of trust assets.

"Trust company" means a New Jersey bank whose powers are limited by its certificate of incorporation to fiduciary and trust activities, or which has represented to the Department that it will restrict its powers to fiduciary and trust activities.

3:1-6.2 Assessments

(a) Every bank as defined in N.J.S.A. 17:9A-1(1), every savings bank as defined in N.J.S.A. 17:9A-1(13) and every State association as defined in N.J.S.A. 17:12B-5(1) shall be assessed a yearly fee of 0.44 of one cent per $100.00 of total assets, except that trust assets shall be assessed a yearly fee of .04 of one cent per $100.00 of total assets.

(b) The fee imposed on other than trust assets shall be assessed at a rate of 0.22 of one cent per $100.00 of total assets as of December 31 and a rate of 0.22 of one cent per $100.00 of total assets as of June 30 of each calendar year. The fee imposed on trust assets shall be assessed at a rate of 0.02 of one cent per $100.00 of total assets as of December 31 and a rate of 0.02 of one cent per $100.00 of total assets as of June 30 of each calendar year.

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3:1-6.6 Examination charge

(a) The individual per diem per person examination charge for an examination of a bank, savings bank, savings and loan association, holding company or trust company shall be $300.00.

(b) The individual per diem per person examination charge for an examination of a licensee, credit union or any person not specified in this section shall be $325.00.

3:1-7.4 Address change

Every licensee referenced in Schedule A or B which changes a licensed business address at any time shall, within 20 days of the change, submit information relative to the address change to the Commissioner, surrender the affected license or licenses for endorsement of the change; and pay to the Department an address change of $75.00. Motor vehicle installment sellers, sales finance companies, home repair salesmen, home repair contractors and home financing agencies are exempt from the $75.00 fee.

3:1-7.6 Penalty for late filing

Motor vehicle installment sellers, sales finance companies, home repair salesmen, home repair contractors and home financing agencies which file renewal license applications after the expirations of their licenses shall be subject to a $25.00 penalty. The imposition of this penalty shall not prevent the Department from imposing further penalties on the licensee for transacting business without a license.

3:6-14.2 Miscellaneous fees

(a) A foreign bank shall pay to the Commissioner the following fees:

1. For filing a copy of its certificate of incorporation, or an amendment or change to the certificate $100.00

2.-3. (No change.)

4. For each substitution of securities, pursuant to N.J.S.A. 17:9A-320B $100.00

3:18-10.1 Initial license requirements

(a)-(d) (No change.)

(e) License and application fees are as follows:

1. The license fee is $1,000 for each new corporate, partnership or sole proprietorship secondary mortgage loan licensee applicant for the initial license period or any part thereof; provided, however, that if an initial license is issued in the second year of any biennial licensing period, the license fee is $500.00. There shall also be a $200.00 non-refundable processing fee due for each applicant at the time of application.

2. The license fee is $1,000 for each new individual secondary mortgage loan licensee applicant for the initial license period or any part thereof; provided, however, that if an initial license is issued in the second year of any biennial licensing period, the license fee is $500.00.

3. (No change.)

4. The license fee is $1,000 for each new branch secondary mortgage loan license applicant for the initial license period or any part thereof; provided, however, that if an initial license is issued in the second year of any biennial licensing period, the license fee is $500.00. There shall be a $200.00 non-refundable processing fee due for each new applicant at the time of application.

5. (No change.)

3:23-2.1 Licensees

The following table indicates the license fees established by the Commissioner of Banking for annual and biennial license periods, the maximum biennial license fees permitted by law and the specific statutory sections affected by the establishment of such biennial and annual license fees.

Licensees	STATUTORY Maximum Biennial Fee	Biennial Fee	Annual Fee
Consumer Loan (N.J.S.A. 17:10-3 & 9)	$1,000.00	$1,000.00	$500.00
Foreign Money Remitter (N.J.S.A. 17:15-1)	$1,000.00	$1,000.00	$500.00
Check Casher (N.J.S.A. 17:15A-4)	$1,000.00	$1,000.00	$500.00
Check Seller (N.J.S.A. 17:15B-7)	$1,200.00	$1,200.00	$600.00
Retail Installment Sales			
(a) Sales Finance Company (N.J.S.A. 17:16C-7)	$1,000.00	$1,000.00	$500.00
(b) Motor Vehicle Installment Seller (N.J.S.A. 17:16C-8)	$ 300.00	$ 150.00	$ 75.00
(c) Home Financing Agency (N.J.S.A. 17:16C-82(a))	$ 600.00	$ 600.00	$300.00
(d) Home Repair Contractor (N.J.S.A. 17:16C-82(b))	$ 300.00	$ 150.00	$ 75.00
(e) Home Repair Salesman (N.J.S.A. 17:16C-82(c))	$ 60.00	$ 60.00	$ 30.00
Insurance Premium Finance Company (N.J.S.A. 17:16D-4)	$1,000.00	$1,000.00	$500.00
Pawnbroker (N.J.S.A. 45:22-4)	$ 800.00	$ 600.00	$300.00

3:38-1.1 License requirements

(a)-(b) (No change.)

(c) The license fee is $1,000 for each mortgage banker or mortgage broker for each biennial license period, or any part thereof provided, however, that if an initial license is issued in the second year of any biennial licensing period, the license fee shall be $500.00.

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(a)

DIVISION OF SUPERVISION

Home Repair Financing Act Regulations

Readoption with Amendments: N.J.A.C. 3:19

Proposed: February 4, 1991 at 23 N.J.R. 256(a).
Adopted: March 14, 1991 by Jeff Connor, Commissioner, Department of Banking.
Filed: March 15, 1991 as R.1991 d.194, **without change.**
Authority: N.J.S.A. 17:1-8.1.
Effective Dates: March 15, 1991, Readoption; April 15, 1991, Amendments.
Expiration Date: March 15, 1996.

Summary of Public Comments and Agency Responses:
The Department of Banking received **no public comments** on the proposed readoption.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 3:19.

Full text of the adopted amendments follows.

3:19-1.2 Licensing requirement
(a) In the administration of sections (d) and 16(e) of chapter 41, P.L. 1960, the Home Repair Financing Act, the following will be deemed to require licensing as a "home repair contractor":
1. A person who, for his own account, solicits and procures the execution of a home repair contract by an owner, and who signs said home repair contract as a contractor, or who has such a home repair contract solicited and executed on his behalf by his salesman, whether or not such contract is subsequently assigned to, or performed by, another; and
2. A person who assumes, by assignment, performance or otherwise, the contractual responsibility to perform a home repair contract, and benefits thereunder.
(b) In the administration of section 1(n) and 16(a) of Chapter 41, P.L. 1960, the Home Repair Financing Act, the following will be deemed to require licensing as a "home repair salesman":
1. A person who contracts or who solicits, arranges, discusses or otherwise negotiates with an owner, directly or indirectly, and in so doing procures any written memorandum, agreement, estimate, contract or any other writing which subsequently results in the execution of a home repair contract between an owner and a home repair contractor.

3:19-1.3 Self-installation exemption
A contract of goods or services, whether contained in one or more documents, executed between an owner and the seller or supplier or goods or services to such owner will be deemed a home repair contract if it provides that the time sales price of said goods or services is to be paid in installments over a period of time greater than 90 days; provided, however, that where such an installment contract for goods is made with the express understanding and representation that such goods will be utilized, installed or applied by the owner independently, and not directly or indirectly in connection with any written, oral or implied installment contract for services, such contract for goods will not be deemed to be a home repair contract.

3:19-1.6 License, reference or certificate number
(a) A home repair contractor shall indicate the current license, reference, or certificate number on all contracts, subcontracts, bids and all forms of advertising.
(b) (No change.)

3:19-1.7 Home repair salesmen; change of affiliation
A licensed home repair salesman must be employed by a licensed home repair contractor and may represent only that employer in the transaction of home repair financing business. A licensed home repair salesman who changes his or her employer shall, within 10 days of this change, submit to the Department a change notification form. When submitting this form, the salesman shall surrender the license indicating the affiliation with his or her prior employer.

COMMUNITY AFFAIRS

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Barrier-Free Subcode
Platform Lifts

Adopted Amendment: N.J.A.C. 5:23-7.18

Proposed: February 4, 1991 at 23 N.J.R. 260(a).
Adopted: March 19, 1991 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Filed: March 22, 1991 as R.1991, d.210, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 52:27D-124.
Effective Date: April 15, 1991.
Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:
A comment was received from the Eastern Paralyzed Veterans Association (EPVA) that was generally supportive of the amendment but pointed out, and proposed solutions to, several problems that remain.
COMMENT: The first concern is that it be made clear that the use of keys remains subject to the limitations set forth in N.J.A.C. 5:23-7.81(f)3.
RESPONSE: This is indeed the case, and the cross-reference is being inserted for purposes of clarification.
COMMENT: Another concern is that the requirement that a universal key "be readily available upon request" is not sufficiently precise and that it will often not "be readily available" for any one of a number of unsatisfactory reasons.
RESPONSE: The Department's reply is that the test of reasonableness will have to be applied in evaluating the facts in each case of alleged violation. If a building owner or manager failed to take reasonable steps to ensure that a universal key is readily available, he or she will be subject to penalty.
COMMENT: EPVA is also concerned that the labeling requirements will be of little value without penalties attached.
RESPONSE: The Department's response is that the general penalty provisions of the Uniform Construction Code will apply and no special penalty provision is required.
COMMENT: EPVA refers to the difficulty that any provision allowing universal keys (which are often in the form of cards) poses for persons who are quadriplegics, and points to the general requirement of N.J.A.C. 5:23-7.85(c) that controls and operating mechanisms "be operable with one hand and not require tight grasping, pinching or twisting of the wrist."
RESPONSE: The Department understands and appreciates this problem and recognizes that universal keys do not provide a solution that is applicable in all cases. However, in conjunction with the other limitations that have been placed on the use of platform lifts and of keys, they do solve the problem and fairly balance the competing concerns in the great majority of cases. If improved technology that would be of benefit to those who are quadriplegics becomes available, it would be the intention of the Department to amend the code to require its use. (The Department also notes that N.J.A.C. 5:23-7.85 is not in conflict with this rule because N.J.A.C. 5:23-7.85(d) provides that "if specialized mechanical, electrical or process equipment has inherent functional requirements which dictate location or force requirements other than those specified in this section, the provisions of this section are not applicable.")

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

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5:23-7.18 Accessible routes: change in level

(a) All changes in level or grade on accessible routes, walks, or floors shall comply with the following:

1.-2. (No change.)

3. Changes in level of greater than three-quarter inch are to be connected by ramp, curb ramp, elevator or platform lift meeting criteria of this subchapter. However, the maximum change in level within a building *[which]* ***that*** may be bridged by a ramp shall be 60 inches.

i. (No change.)

ii. In new construction, platform lifts shall be utilized only for access to special purpose areas and shall not be used on accessible routes between major floor areas or accessible entrances.

(1) "Special purpose area" shall mean and include any area within a larger room or space dedicated to a unique or particular function, such as a stage in an auditorium, an altar platform in a house of worship, or an elevated computer work station within a laboratory. "Special purpose area" shall not include any building entrance or any portion of any accessible route of travel between major floor levels.

iii. Platform lifts shall comply with ANSI/ASME 17.1.

iv. If key operated, platform lifts shall use a universal key *[which]* ***that*** shall be readily available upon request. ***Platform lifts shall be key-operated only where such operation is allowed under N.J.A.C. 5:23-7.81(f)3.***

v. Platform lifts shall have a label attached which prominently displays the telephone numbers of the building owner, enforcing agency, manufacturer, installer, and service contractor.

4. (No change.)

(b) (No change.)

(a)

DIVISION OF COMMUNITY RESOURCES

Intergovernmental Review of Federal Programs and Direct Development Activities

Adopted Recodification: N.J.A.C. 5:38 as 5:50

Adopted Amendments: N.J.A.C. 5:50-1.2, 1.4 and 1.7

Adopted: March 19, 1991 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.

Filed: March 22, 1991 as R.1991, d.211.

Authority: N.J.S.A. 52:27D-3 and 52:14B-3 and 4.

Effective Date: March 22, 1991.

Expiration Date: October 27, 1993.

These adopted amendments are organizational in nature and, as such, in accordance with N.J.S.A. 52:14B-4(b), may be adopted without prior notice or hearing and are effective upon filing. The adopted recodification is to place this chapter within the proper subtitle (Community Services) of the Code.

Full text of the adopted amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

5:50-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

. . .

"Director" means the Director of the Division of [Local Government Services] **Community Resources** within the State Department of Community Affairs, who is the "single point of contact" as required by Presidential Executive Order 12372 and implementing Federal rules.

. . .

5:50-1.4 Review process; applications for financial assistance

(a) Applicants for Federal financial assistance under a qualifying program and reviewing agencies shall adhere to the following procedures:

1. (No change.)

2. Applicants for Federal financial assistance shall submit the application review package to the appropriate agencies as identified in guidelines issued by the Director:

i.-v. (No change.)

vi. A profit organization shall simultaneously submit the application review package to:

(1) The Director [of the Division of Local Government Services];

(2)-(4) (No change.)

vii. (No change.)

3.-6. (No change.)

5:50-1.7 Interstate situations

(a) Pursuant to Presidential Executive Order 12372 and implementing Federal rules, in those cases where an action taken by a Federal agency with respect to financial assistance and direct Federal development activity will have an impact on interstate areas, the Federal agency will notify the affected states through their single point of contact. In New Jersey, this is the Director of the Division of [Local Government Services] **Community Resources** in the State Department of Community Affairs.

(b)-(e) (No change.)

CORRECTIONS

(b)

THE COMMISSIONER

Adult County Correctional Facilities

Medical, Dental and Health Services

Adopted Amendments: N.J.A.C. 10A:31-13.9 and 13.18

Adopted New Rule: N.J.A.C. 10A:31-13.10

Proposed: January 7, 1991 at 23 N.J.R. 15(a).

Adopted: March 8, 1991 by William H. Fauver, Commissioner, Department of Corrections.

Filed: March 13, 1991 as R.1991 d.190, **without change.**

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Effective Date: April 15, 1991.

Operative Date: April 22, 1991.

Expiration Date: March 5, 1995.

Summary of Public Comments and Agency Responses:

The Department of Corrections received one comment in response to the proposed amendments and new rule. A summary of the comment and the Department of Corrections response follows:

COMMENT: Nicholas Scalera, Acting Director, Division of Youth and Family Services, suggested that N.J.A.C. 10A:31-13.9 and 13.10 be amended to add drug and alcohol counseling and appropriate medical care to the list of services which should be provided to a pregnant inmate if she was abusing drugs or alcohol prior to her incarceration.

RESPONSE: The Department of Corrections does not believe that it is necessary to list every type of special service provided by N.J.A.C. 10A:31-13.10(a). Appropriate medical care is already indicated in N.J.A.C. 10A:31-13.10(a)1, and the pregnant inmate will have access to such other services, like drug and alcohol counseling, which are available to the general population of the facility. It is believed that the increased scrutiny and care given to pregnant inmates pursuant to this rule revision will have a positive overall impact on their treatment.

Full text of the adoption follows.

10A:31-13.9 Medical screening

(a) Upon admission, all inmates shall receive:

1. (No change.)

2. A physical examination by a licensed physician;

3. A pregnancy test for all female inmates, except those who are post menopausal or who have a history of a previous hysterectomy; and

4. Any tests determined to be necessary by the physician who is responsible for medical services.

(b)-(d) (No change.)

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10A:31-13.10 Care of pregnant inmates

(a) The county correctional facility shall provide pregnant inmates with medical and social services as soon as possible after the pregnancy is diagnosed. Medical and social services shall include:

1. Prenatal medical evaluation and care;
2. Nutritional supplements and diet as prescribed by the treating physician;
3. Non-directive counseling regarding:
i. Family planning;
ii. Birth Control;
iii. Termination of pregnancy;
iv. Child placement services; and
v. Religious counseling, if desired by the inmate.
4. Obstetrical services;
5. Abortion services, unless the treating physician and/or gynecologist determines that the pregnancy cannot be terminated; and
6. Appropriate postpartum and follow-up medical care.

(b) The delivery or termination of pregnancy shall be scheduled only at a State-licensed medical facility or hospital.

(c) The county correctional facility shall also provide the pregnant inmate with:

1. Suitable maternity clothes if the inmate is unable to provide her own;
2. Reasonable housing assignments, as permitted by available space and the inmate's security status; and
3. Appropriate exercise and reduced work schedules as deemed advisable by the treating physician.

Recodify existing 10A:31-13.10 through 10A:31-16 as 10A:31-13.11 through 10A:31-13.17. (No change in text.)

10A:31-13.18 Dental Care

(a)-(b) (No change.)

(c) Inmates shall receive dental treatment as determined by the dentist in accordance with the Classification and Priority Treatment Program (see N.J.A.C. 10A:31-13.19).

Recodify existing 10A:31-13.18 through 10A:31-13.28 as 10A:31-13.19 through 10A:31-13.29. (No change in text.)

(a)

THE COMMISSIONER

Alternatives to Juvenile Incarceration Grant Program

Adopted New Rules: N.J.A.C. 10A:35

Proposed: January 22, 1991 at 23 N.J.R. 156(b).

Adopted: March 8, 1991 by William H. Fauver, Commissioner, Department of Corrections.

Filed: March 14, 1991 as R.1991 d.192, **without change.**

Authority: N.J.S.A. 30:1B-6 and 30:1B-10; N.J.S.A. 30:1B-26 through 32 and 30:1B-3a(2) and (3).

Effective Date: April 15, 1991.

Expiration Date: April 15, 1996.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

CHAPTER 35
ALTERNATIVES TO JUVENILE INCARCERATION GRANT PROGRAM

SUBCHAPTER 1. INTRODUCTION

10A:35-1.1 Purpose

(a) Pursuant to N.J.S.A. 30:1B-26 et seq., the purpose of this chapter is to:

1. Establish guidelines for the development of community based programs for the placement of juveniles who have been adjudicated as delinquent or who are awaiting delinquency adjudication;
2. Specify the types of agencies and organizations that are eligible to submit proposals to the Department of Corrections for funding to provide placement for juveniles who have been adjudicated as delinquent or who are awaiting delinquency adjudication;
3. Specify the types of information which must be included in proposals that are submitted to the Department of Corrections;
4. Establish the process for the submission, evaluation and awarding of funding for the placement of juveniles who have been adjudicated as delinquent or who are awaiting delinquency adjudication;
5. Specify that funds shall not be awarded for the operation or expansion of secured facilities for juveniles;
6. Establish the requirement of ongoing evaluation and monitoring of the agencies that are awarded contracts for the provision of placement of juveniles who have been adjudicated as delinquent or who are awaiting deliquency adjudication; and
7. Establish the requirement that agencies that have been awarded contracts must prepare and submit quarterly reports to the Division of Juvenile Services Project Coordinator and Contract Administrator as well as the Human Services Evaluation and Monitoring Unit of the specific county program.

10A:35-1.2 Scope

This chapter is applicable to the New Jersey Department of Corrections and the community agencies which provide placement for juveniles awaiting delinquency adjudication or who have been adjudicated delinquent.

10A:35-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Delinquency" means the commission of an act by a juvenile which, if committed by an adult, would constitute:

1. A crime;
2. A disorderly persons offense, or petty disorderly persons offense; or
3. A violation of any other penal statute, ordinance or regulation.

"Department" means the New Jersey Department of Corrections.

"Human Service Evaluation and Monitoring Unit" means a unit established in each county by the Human Service Advisory Council to monitor, evaluate and prepare ongoing reports, for submission to the Council, on the delivery of services by county human service agencies.

"Juvenile" means an individual who is under the age of 18 years pursuant to N.J.S.A. 2A:4-43(a).

10A:35-1.4 Forms

(a) The following forms related to the Alternatives to Juveniles Incarceration Grant Program may be obtained by each agency by contacting the Assistant Commissioner, Division of Juvenile Services, New Jersey Department of Corrections:

1. A-1 FUNDING PROPOSAL COVER SHEET;
2. A-2 BUDGET INFORMATION FORM;
3. A-3 STATE AGENCY CONTRACT INFORMATION FORM;
4. AA302 AFFIRMATIVE ACTION EMPLOYEE INFORMATION SHEET; and
5. AR 50/54 STATE OF NEW JERSEY INVOICE.

SUBCHAPTER 2. AGENCY AND ORGANIZATION ELIGIBILITY

10A:35-2.1 Types of agencies and organizations

(a) Agencies and organizations that are eligible to submit proposals to provide placement for juveniles who have been adjudicated as delinquent or who are awaiting delinquency adjudication, include the following:

1. Public entities, except administrative units and ongoing programs of the New Jersey Department of Corrections;
2. Non-profit community organizations;
3. Non-profit social service organizations;
4. Non-profit religious organizations; and

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5. Civic organizations.

(b) The types of agencies and organizations listed in (a) above must be located and/or operated within the State of New Jersey.

(c) An agency or organization may be county-wide or regional in scope.

(d) A joint proposal from two or more agencies or organizations is encouraged where the joint contribution makes for a stronger, more coordinated and comprehensive project than a single agency or organization project.

(e) Proposals must offer new services or expand existing funded resources.

(f) Proposals to replace funds for an existing program shall not be approved.

SUBCHAPTER 3. PROPOSAL DEVELOPMENT

10A:35-3.1 Content of proposals

(a) The following information must be submitted within proposals in order to be considered eligible for funding of an Alternatives to Juvenile Incarceration Grant Program:

1. A completed Form A-1 Funding Proposal Cover Sheet;

2. A project abstract of 300 words or less that states the objectives and summarizes the operation of the proposed project;

3. A project narrative not to exceed 20 double spaced typewritten pages;

4. A completed Form A-2 Budget Information Form;

5. A completed Form A-3 State Agency Contract Information Form, if applicable;

6. A copy of the most recent Table of Organization;

7. Resumes of principal staff involved in the project;

8. A copy of the most recent organization wide audit report, or other sources which indicate the fiscal viability of the organization;

9. A completed Form AA302 Affirmative Action Employee Information Sheet; and

10. Letters of support (no more than 10) from the community.

10A:35-3.2 Program goals

(a) The project proposals should specifically address the objectives stated below:

1. The reduction of the rate of incarceration from the county in which the Alternatives to Juvenile Incarceration Grant Program is located;

2. The reduction of the overcrowding of county detention centers by reducing the utilization of secure detention through alternatives;

3. The provision of community based alternatives to secure detention and incarceration for juveniles especially between the ages of 12 and 15; and

4. The provision of community based alternatives to detention and incarceration which represent a collaboration of services with the following:

i. The New Jersey Department of Corrections;

ii. The Division of Juvenile Services, New Jersey Department of Corrections;

iii. The Family Court Judges;

iv. The County Probation Office;

v. The New Jersey Division of Youth and Family Services (D.Y.F.S.); and

vi. Other social service and community agencies.

10A:35-3.3 Project narrative

(a) The project narrative shall provide information which shall include a brief description of the provider agency's history, purpose, goals, and objectives.

(b) The project narrative shall provide a need justification which shall state the basis for the provider agency's conclusion that each of the proposed services is needed in the community, and the factors that make the agency the most capable to provide these services. The need justification shall include, but is not limited to:

1. The nature of the problem;

2. The existing services;

3. Relevant statistical data;

4. Relevant discussions or studies within the community;

5. The provider agency's capability to successfully provide the appropriate services;

6. The target population and characteristics; and

7. The geographic areas to be served.

(c) The project narrative shall specify the service goals and objectives of the provider agency including the impact on the target populations to be served and how the services will affect the nature of the problem.

(d) The project narrative shall provide information regarding the accessibility of services which shall:

1. Explain referral mechanisms and processes (formal and informal) and community outreach procedures;

2. Describe the priorities for accepting clients into the program and the procedure(s) to be followed to ensure that all clients meet the eligibility requirements for admission;

3. Explain intake procedures;

4. Describe the hours and days that each service will be available to clients and identify how emergencies are handled; for example, closing crisis, after hours contacts, etc.;

5. List and describe the location(s) where each service will be provided to clients, including in-home provision, if that is an option;

6. Describe transportation options for clients in obtaining each service; and

7. Describe client and program initiated termination procedures and follow-up services, as appropriate, and list the various reasons for termination.

(e) The narrative shall provide information regarding the coordination of services by:

1. Indicating other relevant services and ancillary agencies that will be frequently utilized in combination with the service being proposed for funding;

2. Indicating and describing existing relationships with these services and agencies;

3. Listing agencies which will be referral sources for services to be provided; and

4. Indicating how formal coordination and referral agreements with other community agencies will be accomplished.

(f) When volunteers are used by the provider agency, the project narrative shall:

1. Describe how volunteers are recruited and screened to determine suitability for use in the agency;

2. Describe how volunteers will be used in the agency;

3. Describe how community members and clients will participate in the functioning of the agency including:

i. The delivery of services;

ii. The planning for service provisions; and

iii. The evaluation of services.

(g) The project narrative shall indicate the timetable for the initiation of program activities and implementation of services.

(h) The project narrative shall identify current programs managed by the provider agency, the funding sources utilized and whether the agency is currently receiving, or has in the past received, state contracts. In addition to the narrative, Form A-3 shall be utilized for this information if the provider agency is currently receiving or has in the past received State contracts.

(i) The project narrative shall list the name and address of those entities providing support and/or money to help fund the program for which the proposal is being made.

(j) The project narrative shall include a program summary which describes how the services will be implemented and the time frames involved. The program summary shall:

1. Clearly identify the client population to be served;

2. Clearly identify the geographic area to be served;

3. Define each service to be provided and include the purpose and goal of each;

4. Indicate the number of staff positions created for each service provided;

5. Describe the service activities or methods that staff will employ to achieve the service objectives;

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6. Describe the established personnel policy which requires staff to disclose other employment or interests which have the potential for creating a conflict of interest;

7. Indicate the number, qualification and skills of the staff that will perform the above service activities and include a table of organization for administration and personnel;

8. Describe the management and supervision methods that will be utilized in the operation of programs and the monitoring of the service activities; and

9. Indicate the methods to be used to measure and evaluate the quality of services.

SUBCHAPTER 4. PROPOSAL SUBMISSION, EVALUATION AND AWARD

10A:35-4.1 Proposal submission

(a) The Commissioner, New Jersey Department of Corrections, shall select an advisory group, chaired by the Assistant Commissioner, Division of Juvenile Services, to evaluate proposals.

(b) Eight single sided copies of each proposal shall be submitted to:

Assistant Commissioner, Division of Juvenile Services
New Jersey Department of Corrections
Whittlesey Road
CN 863
Trenton, NJ 08625
Attention: Alternatives to Juvenile Incarceration Grants Program.

(c) An additional copy of each proposal should be submitted to the appropriate County Youth Services Commission.

10A:35-4.2 Proposal evaluation

(a) The advisory group shall evaluate proposals in accordance with the criteria set forth in N.J.A.C. 10A:35-4.3 and make a recommendation to the Commissioner, New Jersey Department of Corrections.

(b) Final decisions to fund proposals shall be made by the Commissioner, New Jersey Department of Corrections.

10A:35-4.3 Criteria for proposal evaluation

(a) The proposal will be evaluated and judged by its responsiveness to the following criteria:

1. The potential of the grant recipient to implement a successful Alternatives to Juvenile Incarceration Grant Program for the placement of pre-adjudicated delinquents into non-secure settings which will ensure the pre-adjudicated delinquents' presence at the next court proceeding;

2. The potential of the grant recipient to implement a successful Program for adjudicated delinquents which will prevent further involvement into the juvenile justice system;

3. The financial and managerial capability of the grant recipient to accomplish the development of a successful Program;

4. Demonstrations of the agency's ability and willingness to comprehensively address the multi-problem needs of the juveniles in the population within the time frame of the proposal;

5. The potential for the project staff to work collaboratively with:

i. The New Jersey Department of Corrections;

ii. The Division of Juvenile Services, New Jersey Department of Corrections;

iii. The Family Court;

iv. Judges;

v. The Probation Department;

vi. The New Jersey Division of Youth and Family Services (D.Y.F.S.);

vii. Other social service and community agencies; and

viii. Community residents;

6. The cost efficiency of the project budget plan based on the number of juveniles to be served and kinds of services rendered; and

7. The intended immediate outcome and long range outcome for the population to be served.

10A:35-4.4 Notification of award

(a) The Division of Juvenile Services, New Jersey Department of Corrections, shall notify the applicants, in writing, of the Commissioner's decision to award or reject a proposal within one month from the applicant's deadline, whenever feasible.

(b) The New Jersey Department of Corrections reserves the right to reject any and all proposals or to negotiate separately in any matter necessary to serve the best interests of the Division of Juvenile Services and the objectives of the Alternative to Juvenile Incarceration Grant Program.

SUBCHAPTER 5. CONTRACT INFORMATION

10A:35-5.1 Funding policies

(a) Agencies seeking the award of a contract from the Alternative to Juvenile Incarceration Grant Program should contact the New Jersey Department of Corrections to ascertain the availability of funds.

(b) No funds shall be disbursed pursuant to a proposal which has been approved, until the parties have entered into a formal contract.

(c) No funds shall be awarded for the operation or expansion of secured facilities for juveniles.

(d) All contracts shall provide for a term of up to one year, subject to renegotiations and renewal depending on availability of funds.

(e) If, at anytime, it is found that the provider agency awarded the contract is incapable of providing the necessary services or has misrepresented its ability to provide services, the award may be rescinded.

(f) A contract shall be awarded within 30 to 45 days prior to the effective date of the contract.

(g) Counties awarded contracts from the Alternatives to Juvenile Incarceration Grant Program shall conduct their intra-county request for proposal (R.F.P.) process and report back within 60 days to the New Jersey Department of Corrections the names of those agencies awarded subcontracts.

(h) Payment will be made as follows:

1. Agencies awarded contracts will receive start-up costs equal to one-quarter of the total agreement approved budget; and

2. After the initial award, the provider agency shall be required to submit quarterly vouchers on Invoice AR 50/54 as well as quarterly budget expenditure reports to receive continued payment.

(i) Agencies awarded contracts shall obtain an audit by an independent Certified Public Accountant (C.P.A.) within 30 days after the contract period expires. The audit shall be forwarded directly to the New Jersey Department of Corrections.

SUBCHAPTER 6. EVALUATION AND MONITORING

10A:35-6.1 State and county evaluation and monitoring

(a) Program agencies awarded contracts shall be monitored and evaluated on site by both the Human Services Evaluation and Monitoring Unit and the New Jersey Department of Corrections Evaluation and Monitoring Team.

(b) All evaluation and monitoring shall be performed under policies and guidelines established by the New Jersey Department of Corrections.

10A:35-6.2 Quarterly reports

(a) The contracting agency shall provide quarterly reports to the Human Services Evaluation and Monitoring Unit and the New Jersey Department of Corrections Project Coordinator and Contract Administrator on the effectiveness of the Alternative to Juvenile Incarceration Grant Program. These reports shall include the following statistical information:

1. The number of youths detained in the juvenile detention center;

2. The number of county juveniles incarcerated or pending transfer to State juvenile correctional institutions;

3. The number of juveniles receiving services from the Grant Program and the level of service;

4. The number of juveniles successfully completing the Grant Program;

5. The transitional or aftercare services the juveniles received upon completion of the Grant Program;

6. The number of juveniles terminated from the Grant Program and reasons for termination;

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7. The court disposition of the juveniles negatively terminated from the Grant Program; and
8. The budget expenditure for the period.

INSURANCE

(a)

DIVISION OF ADMINISTRATION

Policy Constants

Adopted Repeal: N.J.A.C. 11:3-24

Proposed: November 19, 1990 at 22 N.J.R. 3441(a).
Adopted: March 22, 1991 by Samuel F. Fortunato, Commissioner, Department of Insurance.
Filed: March 22, 1991 as R.1991 d.216, **without change.**
Authority: N.J.S.A. 17:1-8.1, 17:1C-6 and 17:29A-37.1.
Effective Date: April 15, 1991.
Expiration Date: January 4, 1996.

The repeal of N.J.A.C. 11:3-24 was mandated by Section 17 of the Fair Automobile Insurance Reform Act of 1990, P.L. 1990, c.8 (N.J.S.A. 17:33B-6), which prohibits policy constants for policies with effective dates on and after April 1, 1991.

Summary of Public Comments and Agency Responses:

Two public comments were received from The Professional Insurance Agents, an insurance producer trade association, and Computer Science Corporation, a servicing carrier for the Market Transition Facility (MTF).

COMMENT: The Professional Insurance Agents objected to the amendment, which would delete N.J.A.C. 11:3-24.4(b)8 and thus exempt lender collateral protection insurance from paying policy constants. The commenter stated that it believed that since such policies cover private passenger automobiles, they should continue to contribute revenue to the New Jersey Automobile Full Insurance Underwriting Association until the charges are lifted for all policies on April 1, 1991.

RESPONSE: While the Department agrees that the N.J.A.F.I.U.A. needs revenue, it disagrees that lenders collateral protection coverages are appropriate insurance upon which to premise collection of the policy constant. The Department notes that the policy is not issued to the owner of the vehicle, but rather to the lender. The subject of insurance is not the automobile as a vehicle, but rather solely as collateral for debt. The collateral protection insurance does not use a private passenger automobile insurance rating system, but rather a rating system based upon the loan transaction. Under these circumstances, application of the policy constant is not appropriate.

COMMENT: Computer Science Corporation stated that the programming time necessary to eliminate the policy constant and RMEC would require notification at least 40 days prior to the implementation of the repeal.

RESPONSE: The Department believes that all insurers and MTF servicing carriers which have in the past included policy constants in their rates should make appropriate changes in their systems so as not to charge the policy constant for policies issued or renewed on and after April 1, 1991. The Department notes that this date was established by N.J.S.A. 17:33B-6 which was enacted March 12, 1990. The repeal of the rule does not in any way affect the elimination of these charges on that date; rather it conforms the Department's administrative rules to current statutes.

The Department has adopted the proposed amendment to N.J.A.C. 11:3-24.4, exempting lenders collateral protection insurance from the policy constant as a matter of record. This amendment was required as the result of litigation with the Department; it has been implemented effective May 31, 1990 consistent with the conclusion of that matter.

Full text of the adopted repeal appears in the Administrative Code at N.J.A.C. 11:3-24.

(b)

DIVISION OF ADMINISTRATION

Residual Market Equalization Charge (RMECs)

Adopted Repeal: N.J.A.C. 11:3-25

Proposed: November 19, 1990 at 22 N.J.R. 3447(a).
Adopted: March 22, 1991 by Samuel F. Fortunato, Commissioner, Department of Insurance.
Filed: March 22, 1991 as R.1991 d.217, **without change.**
Authority: N.J.S.A. 17:1-8.1, 17:1C-6 and 17:30E-1 et seq.
Effective Date: April 15, 1991.
Expiration Date: January 4, 1996.

The repeal of N.J.A.C. 11:3-25 was mandated by Section 17 of the Fair Automobile Insurance Reform Act of 1990, P.L. 1990, c.8 (N.J.S.A. 17:33B-6), which prohibits residual market equalization charges (RMECs) for policies with effective dates on and after April 1, 1991.

Summary of Public Comments and Agency Responses:

Two public comments were received from the Professional Insurance Agents, an insurance producer trade association, and Computer Science Corporation, a servicing carrier for the Market Transition Facility (MTF).

COMMENT: The Professional Insurance Agents objected to the amendment, which would delete N.J.A.C. 11:3-25.4(b)8 and thus exempt lender collateral protection insurance from paying RMECs. The commenter stated that it believed that since such policies cover private passenger automobiles, they should continue to contribute revenue to the New Jersey Automobile Full Insurance Underwriting Association until the charges are lifted for all policies on April 1, 1991.

RESPONSE: While the Department agrees that the N.J.A.F.I.U.A. needs revenue, it disagrees that lenders collateral protection coverages are appropriate insurance upon which to premise collection of a RMEC. The Department notes that the policy is not issued to the owner of the vehicle, but rather to the lender. The subject of insurance is not the automobile as a vehicle, but rather solely as collateral for debt. The collateral protection insurance does not use a private passenger automobile insurance rating system, but rather a rating system based upon the loan transaction. Under these circumstances, application of the RMEC is not appropriate.

COMMENT: An MTF servicing carrier stated that the programming time necessary to eliminate the RMECs and RMEC would require notification at least 40 days prior to the implementation of the repeal.

RESPONSE: The Department believes that all insurers and MTF servicing carriers which have in the past included RMECs in their rates should make appropriate changes in their systems so as not to charge the RMEC for policies issued or renewed on and after April 1, 1991. The Department notes that this date was established by N.J.S.A. 17:33B-6 which was enacted March 12, 1990. The repeal of the rule does not in any way affect the elimination of these charges on that date; rather it conforms the Department's administrative rules to current statutes.

The Department has adopted the proposed amendment to N.J.A.C. 11:3-25.4, exempting lenders collateral protection insurance from the RMEC as a matter of record. This amendment was required as the result of litigation with the Department; it has been implemented effective May 31, 1990 consistent with the conclusion of that matter.

Full text of the adopted repeal appears in the Administrative Code at N.J.A.C. 11:3-25.

(c)

OFFICE OF THE COMMISSIONER

Notice of Delay of Operative Date

Automobile Physical Damage Inspection Procedures

N.J.A.C. 11:3-36

Take notice that Commissioner of Insurance Samuel F. Fortunato has determined that it is necessary to delay the operative date of N.J.A.C. 11:3-36 concerning automobile physical damage insurance inspection

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procedures from March 1, 1991 to a date to be determined. This rule was promulgated in the February 19, 1991 issue of the New Jersey Register at 23 N.J.R. 579(a). Notice of the new operative date will be published in a future edition of the New Jersey Register.

The delayed operative date is necessary because many insurers require some additional time to file for approval, and to have approved, changes to their policy forms that provide for physical damage insurance. Failure to delay the operative date would result in policyholders not being able to obtain physical damage coverage for new, additional or replacement automobiles.

(a)

DIVISION OF ENFORCEMENT AND CONSUMER PROTECTION

Insurance Producer Licensing Professional Qualifications

Adopted Amendment: N.J.A.C. 11:17-3.4

Proposed: February 4, 1991 at 23 N.J.R. 287(a).
Adopted: March 22, 1991 by Samuel F. Fortunato, Commissioner, Department of Insurance.
Filed: March 22, 1991 as R.1991 d.218, **without change.**
Authority: N.J.S.A. 17:1-8.1, 17:1C-6, 17:22A-1 et seq., 17:22A-4(c) and 24.
Effective Date: April 15, 1991.
Expiration Date: April 18, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: The only comment received by the Department was submitted by the Professional Insurance Agents of New Jersey (PIANJ) favoring adoption of the proposed amendment. PIANJ noted that by incorporating the language of the original adoption notice into the regulation itself, the original intent of the Department is captured and remains available to those who consult the regulation only. The proposed change illustrates the meaning of the existing paragraph to which it is added and gives guidance to those seeking information on available methods of compliance with the requirements of this section. PIANJ urged adoption of the proposed amendment without change.

RESPONSE: The Department agrees.

Full text of the adoption follows.

11:17-3.4 Continuing education

(a)-(b) (No change.)

(c) Continuing education credits shall be certified in accordance with the following:

1.-3. (No change.)

4. Each series of courses submitted as a single unit by an approved education program, and which are administered in connection with the issuance or annual maintenance of a professional designation approved in at least one-third of the states requiring continuing education as a condition of licensure, shall be worth up to 12 continuing education credits based upon the length of the courses and the level of difficulty of the subject matter. For example, annual maintenance of the certified insurance counselor designation shall, upon approval of the program, satisfy the continuing education requirements of this paragraph.

(d)-(h) (No change.)

LABOR

(b)

DIVISION OF VOCATIONAL REHABILITATION SERVICES

Procedures and Standards

Adopted Repeals: N.J.A.C. 12:45-1 and 3; 12:46 through 12:49

Adopted New Rules: N.J.A.C. 12:45-1

Proposed: April 2, 1990 at 22 N.J.R. 1045(c).
Adopted: March 8, 1991 by Raymond L. Bramucci, Commissioner, Department of Labor.
Filed: March 8, 1991, as R.1991 d.189, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:16-20 et seq. and 34 C.F.C. § 361.1 et seq.
Effective Date: April 15, 1991.
Expiration Date: April 15, 1996.

Public hearings were held on April 18, 19, and 20, 1990 at various locations throughout the State before Tom Jennings, Chief of Rehabilitation Services for the New Jersey Department of Labor. The official comment period ended May 2, 1990. The Department received 40 comments on the proposed new rules concerning the procedures and standards used by the Division of Vocational Rehabilitation Services. The purpose of the new rules was to more closely follow the language and intent of the Federal law and regulations and State law governing vocational rehabilitation services. The comments were very helpful in clarifying and improving the proposed new rules.

Comments were received in writing from the following persons by Alfred B. Vuocolo, Jr., Department of Labor, CN 110, Trenton, NJ 08625-0110, within the 30 day period prescribed in the original proposal notice:

Allen L. Waters, Facility Specialist
DVRS
Labor Building
Trenton, NJ 08625

Linda Headley, Esq.
Charles W. Dortch, Esq.
Department of Public Advocate
CN-850
Hughes Justice Complex
Trenton, NJ 08625-0850

Gerald P. Boyle, Acting Director
NJ Commission on the Blind
1100 Raymond Blvd.
Newark, NJ 07102

Richard Bonelli
Spectram for Living Development Inc.
210 Riverdale Rd.
Riverdale, NJ 07457

Copies of any materials submitted to Mr. Vuocolo may be obtained by contacting the Division of Vocational Rehabilitation Services, CN 398, Trenton, NJ 08625-0398.

The following persons were in attendance at the public hearings and made comments:

Linda Headely & Charles W. Dortch, Jr., Assistant Deputies
Division of Advocacy for the Developmentally Disabled
NJ Public Advocate
CN-850
Hughes Justice Complex
Trenton, NJ 08625-0850

Alan Koff
New Jersey Association of the Deaf
Fair Lawn, NJ 07410

Kevin Brennan
Bergen County Special Services School District
327 Ridgewood Ave
Paramus, NJ 07652

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Richard Bonelli
Spectrum for Better Living
210 Riverdale Rd.
River Vale, NJ 07675

Sandra R. Pinkerton, Ed.D
505 North Ave.; Apt 15N
Fort Lee, NJ 07024

Charles Vitusky (address not given)
Alex Gallione (address not given)
Brian Fitzgibbons (address not given)
Joan LoSapio (address not given)
Aran Nikashim (address not given)
Ann Jennings (address not given)

A sound recording of these hearings was made. Members of the public who desire to obtain a written record of these hearings may do so by contacting the Division of Vocational Rehabilitation, Room 1005, Labor Building, CN 398, Trenton, NJ 08625-0398; there will be an appropriate charge for transcription thereof.

Summary of Hearing Officer's Recommendations and Agency Response:

Hearings were held on April 18, 1990 in Paramus, New Jersey; on April 19, 1990 at New Brunswick, New Jersey, and on April 20, 1990 in Pomona, New Jersey.

Thomas Jennings, Chief of Rehabilitation Services for the Department of Labor, presided as hearing officer. No specific recommendations were made by the hearing officer for changes to the proposed rules.

Summary of Comments and Agency Responses:

COMMENT: Proposed N.J.A.C. 12:45-1.2 includes in its definition of an "Individual with severe handicaps" one who has one or more physical or mental disabilities resulting from various conditions but does not include traumatic brain injury. Traumatic brain injury should be included because of its gravity and effect upon employability.

RESPONSE: The list in this section follows verbatim the Federal definition contained in 34 C.F.R. §361.1(c)(2). Moreover, the language "or another disability" is broad enough to encompass brain trauma.

COMMENT: Proposed N.J.A.C. 12:45-1.16 which deals with the release of medical and psychological records appears overly restrictive and may interfere with "individual rights" and the legal rights of guardians.

RESPONSE: The Department agrees. N.J.A.C. 12:45-1.16(d)1ii is reversed in accordance with the suggestion as follows:

If the Division questions the qualification of the parent, guardian or representative to properly deal with the review of medical or psychological information that is harmful to the client or applicant, the Division will request a ruling by the Attorney General's office. (See rule text for deleted language.)

COMMENT: At N.J.A.C. 12:45-1.2, Definitions, under the heading "Individuals with severe handicaps", the word "blindness" in paragraph 3 should be deleted. The New Jersey Commission for the Blind and Visually Impaired is the designated lead agency for this disability.

RESPONSE: The Department agrees. "Blindness" is deleted accordingly therefrom.

COMMENT: Proposed N.J.A.C. 12:45-1.2 includes the heading "Physical and mental restoration services." Since the New Jersey Commission for the Blind is the agency responsible for physical restoration services in cases of visual loss, the phrase "except blindness and visual impairment" should be added after the heading.

RESPONSE: Neither blindness or visual impairment is defined or listed under the definition of "physical and mental restoration services". Therefore, there is no need to add this phase to the heading.

COMMENT: Proposed N.J.A.C. 12:45-1.3 should include the following section: If the information received from an individual or his representative indicates legal blindness (N.J.S.A. 30:6-18(a), visual impairment (N.J.S.A. 30:6.1(c) or demonstrates possible eligibility for services by the New Jersey Commission for the Blind and Visually Impaired, as outlined in the Agreement of Cooperation between the Division and the New Jersey Commission for the Blind and Visually Impaired, that individual shall be referred to the Commission for vocational rehabilitation and other services.

RESPONSE: The Department agrees and has inserted this language at N.J.A.C. 12:45-1.3(e).

COMMENT: Proposed N.J.A.C. 12:45-1.15(d) sets forth the information each individual must provide prior to the IWRP conference. Paragraph (d)3 requires information on the number of dependents in the family including the individual with handicaps. In addition, paragraphs (d)2,3,4 and 5 make reference to the assets and liabilities of the "family." Proposed N.J.A.C. 12:45-1.15(g)3 states that, "Each individual with handicaps who is over the age of 18 and living in his or her parent's home shall have only his or her own income considered in the financial participation calculation."

These two passages appear to conflict. By disregarding parental income for those over 18 living at home, the paragraph creates a system of "welfare for the rich" since it is not based upon ability or resources of the individual to contribute. The section also gives preferential treatment to those "over 18 living at home" in contrast to those "over 18" living as independent adults who do not have the overhead support being absorbed by the parents and therefore are presumably not as able to contribute as the individual living at home.

While there are other inequities, it is suggested this financial requirement be reviewed. Since IRS is referenced regarding tax disclosure, it is suggested that age be disregarded as well as whether the individual is living in the parent's home. If the individual is claimed as a dependent for tax purposes, then only family members whose names were included along with the individual with handicaps on the tax return would have their resources noted on DVR-17. If the individual is not claimed as a dependent, then only his/or her immediate family resources would be noted in accordance with the tax return and marital status. The latter suggestion avoids the loophole of being over 18, married, yet living at home with parents but avoiding under the proposed rule the inclusion of even the wife's income while both may be at the same time carried as dependents of the head of the household.

RESPONSE: The Department agrees; however, because amending N.J.A.C. 12:45-1.15(g)3 at this time would amount to a substantive change in the rules by potentially altering the class of persons who might be eligible for benefits, this revision shall be made by renoticing the proposed amendment and adopting it in a manner consistent with the requirements of N.J.A.C. 1:30-4.3. At this future date, the Department will amend the text as follows:

If the client is over the age of 18 and living in his or her parent(s) home and is claimed as a dependent, then the income of the parent(s) will be considered in the financial participation calculation.

COMMENT: Proposed N.J.A.C. 12:45-1.2 defines "competitive work" to include a minimum number of hours (20) per pay period, as well as compensation in accordance with the Fair Labor Standards Act, 29 U.S.C. §201 et seq. The requirement for a minimum number of hours worked should be deleted because there are some occupations particularly well-suited to a person with severe disabilities, such as consulting or data processing, in which the number of hours worked per week may fluctuate considerably. The abitrary 20-hour requirement could unnecessarily preclude those individuals from receiving essential services.

RESPONSE: "Competitive work" as defined in N.J.A.C. 12:45-1.2 relates solely to "supported employment" as defined in 34 C.F.R. §361.1 and is taken verbatim therefrom [Authority: Secs. 7(18) and 12(c) of the Act; 29 U.S.C. 706(18) and 711(c)] Federal law mandates this 20 hour per week minimum.

COMMENT: The definition of "eligible" or "eligibility" in proposed N.J.A.C. 12:45-1.2 as "referring to a certification that" a person has met the substantive standards for eligibility established in the Federal law is inappropriate because it adds an additional criterion to the Federal standards, namely, execution of a document by a counselor. DVRS should limit the definition of eligibility to substantive standards.

This is the current agency practice in field offices of DVRS. Counselors must determine whether the requested services are ones that the agency is willing to provide and then certify eligibility. Clients who request services which the agency prefers not to provide (for example, modifications, interpreter services, and the like) are not certified to be eligible, receive no IWRP, and therefore are never apprised of their appeal rights.

The Federal law contemplates exactly the opposite procedure, in that a person with vocationally handicapping conditions who can be reasonably expected to benefit in terms of employability from vocational services shall be found eligible. Upon a finding of eligibility, the individual and his or her counselor shall jointly develop an individualized written rehabilitation program based upon the person's needs. It is only after that point that delivery of a particular service is an appropriate issue.

RESPONSE: The definition of "eligible" or "eligibility" in N.J.A.C. 12:45-1.2 is taken verbatim from 34 C.R.F. Part 361 Subpart A. Sec. 361.1 and is referenced to Sec. 7(7) of the Act; 29 U.S.C. 706(7). The suggestion that denial of benefits to a client is predicated on an arbitrary decision by the agency that it does not wish to provide services is inaccurate. It

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is Departmental policy to apprise a client/applicant of appeal rights at time of application, denial or termination of benefits.

COMMENT: "Employability" as defined by proposed N.J.A.C. 12:45-1.2 contains limiting language which should be deleted. The definition states that employability is determined based on a determination "first that an individual is likely to enter or retain full-time employment" as a primary objective, "or if appropriate," to achieve one of a range of other specific vocational goals. The Federal law reads conjunctively and does not support or sanction this hierarchy of vocational goals. As long as the goal chosen by the individual is among the acceptable outcomes, be it part-time work, homemaking or the like, and the provision of vocational services may benefit the individual in achieving that goal, the individual is employable under 29 U.S.C. Sec. 706(6). While the Federal law does refer to competitive employment as a primary objective, it continues by using the language "and when appropriate part-time employment consistent with the capacities or abilities of the individual in the labor market or any other vocational outcome the Secretary may determine consistent with this chapter." *Id.* The definition should be revised to conform to Federal law.

RESPONSE: The definition is consistent with Sec. 7(6) of the Rehabilitation Act of 1973 as amended and is taken verbatim from 34 C.F.R. § Sec. 361.1.

The definition in N.J.A.C. 12:45-1.2 does not contain the word "first" pertaining to full-time employment, nor does it infer a hierarchy of vocational goals.

COMMENT: The proposed definition of "evaluation of rehabilitation potential" in N.J.A.C. 12:45-1.2 varies significantly from the Federal definition.

Paragraph 1 of the proposed rule inappropriately limits the preliminary diagnostic study to a determination that an individual is eligible for services. Due to the certification language in the definition of eligible, discussed above, this may have a limiting effect. Therefore the proposed definition of eligibility should be revised to specifically state the substantive requirements for eligibility, as does the Federal statute.

In paragraph 2, the proposed rule permits "a comprehensive evaluation of pertinent factors" bearing on eligibility and service needs. The Federal law specifically enumerates the areas to be considered and contains limiting language to guard against over-reaching by counselors. Again, the rule should be revised to conform to the Federal standards.

In paragraph 5, the proposed rule allows an extended evaluation period, but fails to incorporate the Federal requirement that individuals in extended evaluation be assessed every 90 days to determine the individual's progress. Failure to track individuals through the extended evaluation period can result in those with "difficult" cases being shelved for the full 18-month period while counselors attend to clients with more routine problems.

Most problematic with the proposed rule, however, is its failure to incorporate subparagraphs (c) and (f) of the Federal statute, which provide for the actual administration of services. Those sections should be incorporated into the rule.

RESPONSE: The Department agrees with this suggestion and has amended this definition in N.J.A.C. 12:45-1.2. The provision as amended is more comprehensive and specific; it adheres strictly to the Federal regulation contained in 34 C.F.R. § 361.1(2) and the enabling statute, 29 U.S.C. 906(5).

COMMENT: "Extreme medical risk" is defined in proposed N.J.A.C. 12:45-1.2 to include only "a risk of substantially increasing functional impairment or risk of death if medical services are not provided expeditiously." The limitation to "increasing functional impairment" is inappropriate. The definition should be revised to include any situation in which a physician or other appropriate professional deems the individual to be at an "extreme medical risk."

RESPONSE: The definition of "extreme medical risk" in N.J.A.C. 12:45-1.2 follows verbatim the definition contained in 34 C.F.R. § 361.1 (Authority: Sec. 102(d) of the Act; 29 U.S.C. 722(d)).

COMMENT: "Family member" as defined by proposed N.J.A.C. 12:45-1.2 includes any person in the applicant or client's household with whom there is a "close interpersonal relationship," but who is not related by blood or marriage. Although this definition is consistent with the Federal definition contained in 34 C.F.R. § 361.1, the definition should also state that the category is not within the scope of the terms "family" or "relative" in proposed N.J.A.C. 12:45-1.15 dealing with financial participation. In the Federal scheme, the term "family member" is used only in conjunction with the requirement that services be provided to family members of clients. See 34 C.F.R. § 361.42(7).

RESPONSE: The definition of "family member" follows verbatim 34 C.F.R. § 361.1. In reference to N.J.A.C. 12:45-1.15 regarding participation in costs, 34 C.F.R. § 361.47 allows state agencies to consider financial participation. For purposes of N.J.A.C. 12:45-1.15, the term "family member" in N.J.A.C. 12:45-1.2 and 34 C.F.R. § 361.1 should remain consistent with each other. The Department believes that creation of a State rule that differs from the Federal one would create confusion. The Department's normal procedure is to ask if the parties are married or have a close interpersonal relationship. If the answer is "no," the issue is pursued no further.

COMMENT: "Impartial hearing officer" in proposed N.J.A.C. 12:45-1.2 is defined to prohibit persons who are employees of a public agency involved in "any decisions" regarding furnishing or denial of vocational rehabilitation services to "a vocational rehabilitation applicant or client" from serving as impartial hearing officers. This is poorly phrased; on the one hand prohibiting administrative law judges employed by the State from sitting as hearing officers, while on the other allowing employees of private organizations receiving funds from DVRS to be hearing officers, as long as their agency was not involved with decisions about a specific client. Paragraph 1 should be rephrased to clarify that an impartial hearing officer cannot be in any continuing relationship with an agency or organization—public or private—directly or indirectly involved in the provision of rehabilitation services in the State of New Jersey, with the exception of individuals whose sole contact with the system is in their capacity as impartial hearing officers.

RESPONSE: The definition of "Impartial hearing officer" follows verbatim 34 C.F.R. § 361.1. Under the "plain meaning" rule of statutory construction, someone who has a financial or other interest in the case's outcome would be ineligible to be "impartial" and automatically disqualified. (Authority: Sec. 102(d) of the Act; 29 U.S.C. 722(d))

COMMENT: "Integrated work setting" as defined by proposed N.J.A.C. 12:45-1.2 requires a setting in which "handicapped" workers are either not in the majority, or if that is not feasible, that they have regular contact with "non-handicapped" workers. This definition assumes that all persons with disabilities are similar, which they are not. The definition should be revised to accurately achieve its goal of ending social isolation of persons with disabilities by inserting the phrase "the same or similar" before "handicaps" each time it is used in the definition.

RESPONSE: "Integrated work setting" as defined in N.J.A.C. 12:45-1.2 is the same as the definition in 34 C.F.R. § 361.1 and pertains only to "supported employment." The Federal regulation forbids more than eight people with any kind of handicap to be together in an integrated work setting with other workers. (Authority: Sections 7(18) and 12(c) of the Act: 29 U.S.C. 706(18) and 7118c)). It is felt by the Department that integrating handicapped persons with non-handicapped persons in a work setting would be more likely to end their social isolation than permitting that all of their co-employees be handicapped in some way.

COMMENT: "Physical and mental restoration services" are defined by proposed N.J.A.C. 12:45-1.2 in a manner which inappropriately adds limiting language to three services mandated by Federal law. Paragraphs 4, dealing with nursing services, and 10, dealing with podiatry, are both delimited by the phrase "in conjunction with other medical and healthcare services and upon recommendation of a physician." The Federal regulations do not contain this qualifying language. See 34 C.F.R. § 361.1, Physical and mental restoration services, Paragraphs (iv) and (x). The phrase should be deleted from the text of the rule.

RESPONSE: The Department agrees. The phrase, "in conjunction with other medical and healthcare services and upon recommendation of a physician", as used in N.J.A.C. 12:45-1.2, paragraphs 4 and 10 of the definition of "physical and mental restoration services" has been deleted to conform with Federal regulations.

COMMENT: The definition of "physical or mental disability" in N.J.A.C. 12:45-1.2 is inappropriate. There is no need to define this term because of other language in N.J.A.C. 12:45-1.5 which speaks about preliminary diagnostic study and the evaluation of rehabilitation potential confuses this definition.

RESPONSE: This definition follows verbatim 34 C.F.R. § 361.1 and Section 7(7)(A)(i) of the Act; 29 U.S.C. 706(7)(A)(i). The Department believes that, when the definition is read *in pari materia* with other sections of the regulatory text, the parameters of eligibility become clear.

COMMENT: Proposed N.J.A.C. 12:45-1.2 defines "vocational rehabilitation services" as "time-limited services that are dedicated to the reduction or elimination of the barriers to employment," with additional criteria listed depending upon whether the services are provided to indi-

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viduals or groups. The definition should delete the phrase "time-limited" and should use the term "employability" instead of employment, in order to be consistent with the substantive provisions of the Federal act.

RESPONSE: The Department agrees. The term "time-limited" has been removed from the definition of "vocational rehabilitation services" in N.J.A.C. 12:45-1.2.

Although the term "employment" is consistent with the definition of "employability" as defined in N.J.A.C. 12:45-1.2 and 34 C.F.R. § 361.1 and Sec. 7(6) of the Rehabilitation Act of 1973 as amended, the term "employability" has been substituted consistent with the Department's effort to tract the Federal regulations.

COMMENT: The procedure for processing applications provided in N.J.A.C. 12:45-1.3 should include a provision that all persons contacting the agency to inquire about services shall be informed of the availability of application forms and that forms will be made available by mail and in-person from local offices.

RESPONSE: N.J.A.C. 12:45-1.3 provides that ". . . an application can be obtained from any local Division office," which text indicates with sufficient specificity that clients can obtain applications either by mail, telephone or in person from any local office.

COMMENT: Proposed N.J.A.C. 12:45-1.5(b)1 fails to indicate, as mandated by 34 C.F.R. § 361.32(c), that a preliminary diagnostic study must, where appropriate, also include "evaluations by qualified personnel of the potential to benefit from rehabilitation engineering services."

Proposed N.J.A.C. 12:45-1.5(c) should be changed to read that "In cases of mental retardation, reports from certified school psychologists **shall** be used, if appropriate, to document disability" as opposed to "may" to further the policy of 34 C.F.R. § 361.30 that client files must be handled expeditiously and equitably.

Subsection (d), which permits an individual to select his or her own physician "if appropriate," should be revised to generally permit such selection, unless the physician will not accept payment at the standard agency rate or for other good cause.

RESPONSE: The Department agrees with the comment on N.J.A.C. 12:45-1.5(b). The following has been added as paragraph (b)3: "As appropriate, evaluations by qualified personnel of the potential to benefit from rehabilitation engineering services."

As to N.J.A.C. 12:45-1.5(c), the use of "shall" instead of "may" in the text would limit a client's choice as to who could perform an evaluation and could create an additional hardship for many clients.

N.J.A.C. 12:45-1.5(d) as proposed, allows individuals to select their own physician to conduct the necessary medical examination. The term "if appropriate" pertains to the physician's qualifications to conduct the necessary specialty evaluations.

COMMENT: Proposed N.J.A.C. 12:45-1.7(e)2, dealing with extended evaluations for determining vocational rehabilitation potential, should be revised to permit a determination of ineligibility to be made only upon evidence that establishes "beyond a reasonable doubt" that the disabled individual cannot be expected to benefit in terms of employability from the provision of vocational rehabilitation services. Although the Federal regulations use the standard "clear and convincing evidence," no standard is currently set forth in the Federal statute. The statutory standard in effect until the 1984 amendments to the Federal act, which has been incorporated into case law, was the "beyond a reasonable doubt standard."

RESPONSE: The Federal regulation at 34 C.F.R. § 361.34(e)2 requires the "clear and convincing" standard enunciated by N.J.A.C. 12:45-1.7(e)2. It does not provide for proof "beyond a reasonable doubt."

COMMENT: Proposed N.J.A.C. 12:45-1.8(c)1iii should require that clients be advised of their rights to assistance through the Client Assistance Program as mandated by the Act 29 U.S.C. Sec. 732, rather than doing so when warranted in the counselor's discretion.

RESPONSE: The Department agrees. The language, "when appropriate" has been removed from the final text.

COMMENT: Although the order of selection proposed in N.J.A.C. 12:45-1.9 is sanctioned by Federal law, it is suggested that subsection (a) be refined to clarify that the order of selection will be imposed only when a shortage of funds precludes provision of all appropriate services to all eligible clients.

RESPONSE: The language contained in N.J.A.C. 12:45-1.9(a) is consistent with 34 C.F.R. §361.36(a), and plainly means that the order of selection will be imposed only when a shortage of funds arises.

COMMENT: While N.J.A.C. 12:45-1.9(b)1 and (b)2 comport with Federal law (see 34 C.F.R. §361.36), paragraph (b)3, which affords a priority category to "[n]on-severely disabled individuals who are also clients of other agencies with whom DRVS has written agreements of shared service responsibility," does not, and should be deleted. Many clients of DVRS are not eligible for services from other agencies, and it is inappropriate to give priority to a group of individuals (other than those who are severely disabled) on the basis of their disabling condition.

For example, under the proposed rule an individual disabled as a result of a head trauma prior to age 22 whose disability is chronic, severe, and of long-term duration, and whose disability impairs three or more major life functions would presumably be eligible for services both from DVRS and the Division of Developmental Disabilities (DDD) within the Department of Human Services. If the same individual received the same injury at age 23, he or she would not ordinarily be eligible for DDD services, and thus would not be in priority status for DVRS services.

RESPONSE: The Federal regulation at 34 C.F.R. §361.36 dictates the priorities in paragraphs (b)1 and 2 established by N.J.A.C. 12:45-1.9(b). As for paragraph (b)3, the commentation is established to lower service costs in cases where there are funds from other sources. The purpose of the rule is to spread the resources as far as possible in a constrained economic circumstances. The Department realizes that less seriously injured clients who do not have an alternate source of funding will be disadvantaged; on the other hand, without the categories reflected in paragraphs (b)3 and 4, benefits would be available to a fewer number of persons.

COMMENT: In the earlier hearing, it was suggested that paragraph (b)3 of N.J.A.C. 12:45-1.9(b) include clients most likely to suffer harm (for example, regression, loss of employment, etc.). This suggestion is reiterated.

RESPONSE: The proposed category would be too vague to enforce. If clients in priority 3 began to worsen, they would automatically move into a higher priority category.

COMMENT: Proposed N.J.A.C. 12:45-1.9, which states "(i)f [DVRS] cannot serve every individual within a designated category due to the amount of available funds, then the Division will provide services to clients in the order in which they applied for services," is unclear. Does it mean that all clients in the first priority category, will be serviced in order of their application, before anyone in the second priority category may receive any services.

RESPONSE: N.J.A.C. 12:45-1.9 means and is intended to mean that all clients in the first priority category will be served on a first-come, first-served basis. Thereafter clients in the second priority category shall receive benefits under the same formula.

COMMENT: Proposed N.J.A.C. 12:45-1.9(b) and (c) are inconsistent with each other by establishing categories by date of certification of eligibility (see N.J.A.C. 12:44-1.9(b)) and then priority within those categories by date of application (see N.J.A.C. 12:44-1.9(c)). The Public Advocate agrees that date of application should continue, particularly because the very complexity of need may delay issuance of a certification of eligibility. These provisions should be revised to be consistent.

RESPONSE: There is no inconsistency between these two sections. Eligibility must be established first under 34 C.F.R. §361.32, 361.33. Thereafter, the client is placed in a priority status, but ranking within the priority category is determined by the date of the original application. The Department believes that the rule is clear on this point.

COMMENT: Once priorities have been established pursuant to N.J.A.C. 12:45-1.9, it is inappropriate to provide post-employment services which disregard the order of selection.

RESPONSE: Post-employment services are on-going and usually involve fixed costs for replaceable items (for example, a prosthesis) which would be needed to retain employment. They are mandated by 34 C.F.R. §361.43(b). Once a client has received service from DVRS, it would be inequitable to terminate services in mid-stream to such a client in order to service a new client.

COMMENT: Proposed N.J.A.C. 12:45-1.13 should include tactile interpreting for deaf-blind individuals. See 34 C.F.R. §361.43(a)8.

RESPONSE: In New Jersey, deaf-blind individuals are served by the Commission For the Blind and Visually Impaired.

COMMENT: The statement, "[to] maintain or regain other suitable employment shall not be construed to mean an upgrade of services" should be deleted from N.J.A.C. 12:45-1.13(a)12. The Federal regulations at 34 C.F.R. §361.43(a) and (b) require the provision of post-employment services necessary to maintain or regain suitable employment, without any qualifying language. There are instances when "necessary" services to maintain employment could be considered "upgrades" by DVRS (for example, providing increasingly sophisticated computer equipment or software to a severely disabled individual engaged in his or her own

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business). The Federal act contemplates that such services will be provided in order to prevent the alternative of unemployment.

RESPONSE: The Department agrees. The language pertaining to ". . . an upgrade of services" has been deleted from N.J.A.C. 12:45-1.13(a)12 as adopted.

COMMENT: The reference to "individuals with handicaps" in N.J.A.C. 12:45-1.15(a) and (b) could be misconstrued to make individuals with multiple disabling conditions responsible for cost participation.

RESPONSE: The Department agrees. The phrase "individuals with handicaps" is replaced with the word "client" in the adopted rules.

COMMENT: Proposed N.J.A.C. 12:45-1.15(d) imposes onerous requirements upon clients/applicants, mandating that they disclose, among other things, the Social Security number, all income sources of all family members, and liquid assets of the family. In addition, clients are required to sign a certification that the financial information provided to the agency is true. The requirement that clients allow DVRS access to their Federal tax return—secured directly from the IRS—is unwarranted, and truly invasive of clients' privacy interests. Clients, who file joint returns, may not want to provide such information in such a manner. Clients should not be in the position of being forced to release their tax returns or having to coerce others over whom they have no control to do so, as a condition of receiving vocational rehabilitation services. The agency can accomplish the same goal in a far less intrusive manner by requiring evidence of income and deductions, and permitting a client to produce a completed Federal and State tax return.

Similarly, the income and liquid assets of other family members—unless the client is a claimed dependent—is not information to which the Agency is entitled. Therefore, paragraphs (d)2 and 4 should be deleted.

With respect to subsection (f), the agency would require an individual to execute a new DVR-17 and tax disclosure from whenever there is "a significant change in financial status or a request for post-employment services." For the reasons set forth above, the requirement that tax disclosure forms be submitted is overly intrusive and should be stricken from the rule.

RESPONSE: N.J.A.C. 12:45-1.15(c) is revised to require each client to submit a copy of the most recent tax return form. The tax return of the person or persons claiming a client as a dependent must also be submitted. The requirements of N.J.A.C. 12:45-1.15(c) and (f) that tax disclosure forms be signed by clients or those claiming them as dependents is deleted. The social security number of the applicant is, however, necessary for identification and to verify income for establishing eligibility.

COMMENT: Proposed N.J.A.C. 12:45-1.15(g) addresses the individual's cost-share responsibility. While the formula established in paragraphs (g)1 and (g)2i and iii appears to operate fairly, the main text of paragraph (g)2 is inconsistent with its subparagraphs (g)2i through iii. The main text states that "[i]n cases where the service being provided is a total cost item, the individual with handicaps shall contribute 10 times the amount of excess income," but where the excess income is negative, there will be no individual responsibility. Where however, the excess income exceeds the cost of the item, the individual will pay the entire cost, and if excess income is less than the total cost of the item, the individual will pay the difference between total cost and excess income. The "10 times excess income requirement" contradicts the formula as written and should be deleted from the rule.

Finally, the income allowance used in computing financial participation is a weekly allowance while the basis for the liquid asset allowance is not specified. How, if at all, these allowances are linked to the expected duration of the provision of services is not addressed in the proposal. The commenter suggests that the formula for computation of financial participation be revised to handle this consideration.

RESPONSE: The "10 times excess weekly income" refers to a fixed cost item (for example, a wheel chair, prosthesis etc.). If the client earns $507.00 per week and needs a $5,000 wheel chair, he or she would be required to contribute $50.00 per week ($507.00-457.00) for 10 weeks toward the item.

In N.J.A.C. 12:45-1.15(g)1 and 2, as adopted, the term "liquid asset" has been defined and the definition of excess income has been refined by adding the word "weekly" to give it greater clarity (see N.J.A.C. 12:45-1.15(g)1).

COMMENT: Proposed N.J.A.C. 12:45-1.16(a) is overly broad and would release identifiable personal information to advisory or other bodies which have responsibility for administration of the vocational rehabilitation program. At least with respect to clients with HIV infection, this proposal would violate a recently enacted state confidentiality statute. See P.L. 1989—C. 303. The proposed new rules may subject agency personnel to personal liability for disclosures they believe to be permissible.

RESPONSE: This language follows verbatim 34 C.F.R. §361.49(b). Furthermore, "advisory or other bodies" do not have responsibility for the administration of the vocational rehabilitation program. Records may not be released to any advisory board. There are sufficient safeguards to insure confidentiality in the Act when records are released only to those authorized to have them.

COMMENT: Proposed N.J.A.C. 12:45-1.16(d) would allow the agency to impermissibly limit clients access to their own records. Subparagraphs (d)1i and ii, as well as the second sentence of paragraph (f)1 should be deleted because they limit the release of potentially harmful information to the representative of a client in instances where the agency believes the information is harmful and neither the client nor the representative is capable of dealing with the information.

Such a limitation conflicts with the plain meaning of the term "representative." DVRS cannot constrain the duly selected representative of a client or a client applicant, thereby placing the burden upon the client to litigate the matter when the Agency does not wish to respond to his or her representative. The rules do not provide a mechanism for informing clients with specificity of the information being withheld. But 34 C.F.R. §361.49(c)(1) mandates that the Agency be responsive to the individual or his or her representative. If the rules prohibit release of information to the client assistance program, it would violate 29 U.S.C. §732 of the Act.

RESPONSE: N.J.A.C. 12:45-1.16(d)1i is revised to read "When requesting medical or psychological information, the Division will request the professional providing such information to include a statement about whether the release of such information to the client may be harmful and should be restricted."

N.J.A.C. 12:45-1.16(d)1ii is revised to provide that if a question should arise regarding whether the representative is properly qualified to deal with the review of medical or psychological information that is harmful to the client or applicant, the Division will request a ruling by the Attorney General's office. 29 U.S.C. §732 does not require that client assistance programs receive all information about clients. It merely authorizes the expediture of federal funds to establish such a program. It contains no mandatory language regarding the full disclosure of client information to such an agency if the release of such information would adversely affect the client's welfare. The Department believes that the rule as amended strikes the proper balance between the right of a client or representative to inspect his or her records and the need to shield the client and/or a representative from the potential disclosure of that information.

COMMENT: N.J.A.C. 12:45-1.16(e)1ii, iii and v are internally inconsistent insofar as they provide that personal information to be used in auditing, evaluations or research projects will not be released to the involved individuals, while such information may be released with the informed written consent of the individual or his or her representative. How can a client ever give informed consent without being privy to the information at issue? Furthermore, why should personal information ever be disseminated (perhaps publicly) in a report to which the client may not have access. This section should be redrafted to allow release of personal information only with informed written consent, with the client or his representative having access to all case information.

RESPONSE: The Public Advocate misreads this section. The section simply allows the dissemination of statistical information for evaluation and research purposes to other agencies. N.J.A.C. 12:45-1.16(e) follows verbatim 34 C.F.R. §361.49(d), which makes it clear that the confidentiality of the personal information of the individual whose file is used is to be maintained.

COMMENT: Proposed N.J.A.C. 12:45-1.16(f)3 and 4 permit the agency to release information without written consent in response to certain investigations and to protect the client or others from harm, and reflect the exceptions to the general Federal prohibition against disclosure without written consent contained in 34 C.F.R. §361.49(e)3 and 4.

Even in the latter circumstances, however, clients should be notified of intended disclosure prior to the actual release of such information. N.J.A.C. 12:45-1.16(f)3, which reflects the Federal regulation, requires the Agency to "release personal information in response to investigations in connection with law enforcement, fraud or abuse . . . and in response to judicial order." This language is extremely vague, and invites abuse and harassment of clients by outside agencies utilizing this route to obtain sensitive personal information. Notifying clients when such a request for information is received prior to release of information would give clients

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the opportunity to secure appropriate protective orders, should they so desire.

Similarly, the permissible disclosure under N.J.A.C. 12:45-1.16(f)4, "in order to protect the individual or others when the individual poses a threat to his or her safety or to the safety of others" should be more narrowly drafted. The agency should include as part of this proposed amendment specific standards to be employed when determining whether a safety threat is present, and whether it is of a nature which would warrant disclosure. Factors which should be considered are the nature of the alleged harm, its seriousness, its probability, its imminence, and the extent to which other measures could be employed to prevent harm. An opinion as to each of these factors, to the extent possible under individual circumstances, should be secured from an appropriate professional. While we appreciate that there are instances in which there is a need for rapid disclosure (for example, a suicide threat) there are many other instances where great damage might be done by improper disclosures. Pointing to the agency's growing caseload of clients with AIDS and related conditions, it is foreseeable that agency staff could misconstrue this provision to allow release of clients' diagnoses to prospective or current employers, family, healthcare professionals, or others, in the mistaken belief that AIDS can be transmitted by casual contact.

RESPONSE: N.J.A.C. 12:45-1.16(f)3 and 4 follows verbatim 34 C.F.R. §361.49(c)3 and 4. Clearly, when a law enforcement authority or court demands such information, it must be furnished. As for the concern that paragraph (f)4 might authorize the release of harmful information about the client in an inappropriate circumstance, the Department believes that both the state and federal regulations are drafted with sufficient clarity to demonstrate that such information be released only in extreme circumstances where the client would threaten him or herself or other people with imminent danger.

COMMENT: Proposed N.J.A.C. 12:45-1.17 should be supplemented to reflect the Federal requirement that all applicants and clients must be informed of the opportunities available under this section, including the names and addresses of individuals with whom appeals may be filed. See 34 C.F.R. §361.48(a).

The rule should also be revised to reflect that all "determinations," rather than "actions" with respect to the furnishing or denial of services are appealable. See 34 C.F.R. §361.48(c)1.

RESPONSE: The Department agrees. N.J.A.C. 12:45-1.17(a) as adopted has been revised accordingly.

COMMENT: Proposed N.J.A.C. 12:45-1.17(a)4 impermissibly limits the client's choice of representative during the review process; it contains a laundry list of appropriate representatives, but inappropriately bars a client under 18 from representing himself or herself. The Federal regulations contemplate that an applicant or client (without reference to age), the individual's parent, guardian, or other representative, including counsel or other appropriate advocate be afforded the opportunity to participate in the appeal. 34 C.F.R. §361.48(c)(2)ii.

RESPONSE: The Department agrees. N.J.A.C. 12:45-1.17(a)4 as adopted includes "or other representative." In addition, the age requirement has been deleted.

COMMENT: Proposed N.J.A.C. 12:45-1.17(a)5 should be revised to include the Federal requirement that the appellant or his or her own representative may present information and witnesses, in addition to presenting evidence and having the right of cross-examination. See 34 C.F.R. §361.48(1)ii.

RESPONSE: N.J.A.C. 12:45-1.17(a)5 has been modified to reflect the language used in the Federal regulation.

COMMENT: Proposed N.J.A.C. 12:45-1.17 does not reflect the standard of review to be utilized by the Director in reviewing or altering the decision of the fair hearing officer. See 34 C.F.R. §361.48(c)vi.

Secondly, the rule should be revised to indicate that once the agency is aware that the client or applicant has secured a representative to act on his or her behalf, the agency will deal with the representative with respect to scheduling of a fair hearing, and will copy the representative on all correspondence, decisions or other documents sent to the client which are related to the appeal. The agency does not routinely do so, which causes confusion and undermines the effectiveness of the client representative.

RESPONSE: The standard for review is set forth in N.J.A.C. 12:45-1.8(c), namely, "clear evidence." Paragraph 4 of N.J.A.C. 12:45-1.17(a) as adopted provides that all correspondence, scheduling of fair hearing or other documents related to the appeal will be provided to both the client and representative.

Summary of Agency-Initiated Changes:

Upon reviewing the proposed amendments to N.J.A.C. 12:45, the Department has made the following changes upon adoption:

1. At N.J.A.C. 12:45-1.15(d), the language requiring a client to disclose income sources of each family member was deleted because it could have had the effect of requiring a family member who resided with a client, but upon whom the client was not dependent, to disclose personal information about his/her finances.

2. At N.J.A.C. 12:45-1.15(h), the amounts in the Weekly Income Allowance table have been adjusted to reflect the most current United States Bureau of Labor Statistics, *Consumer Expenditure Survey* amounts for weekly income, upon which the table is based as explained in subsection (h) of the rule text preceding the table.

3. At N.J.A.C. 12:45-1.15(j), while the rules as initially proposed did not contain a provision regarding work adjustment training, the Department felt that its benefit to potential clients far outweighed any extra costs that might be incurred by its inclusion.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

CHAPTER 45
DIVISION OF VOCATIONAL REHABILITATION SERVICES

SUBCHAPTER 1. PROCEDURES AND STANDARDS

12:45-1.1 Purpose and scope

(a) The purpose of this subchapter is to set forth the procedures, standards and criteria used by the Division of Vocational Rehabilitation Services to rehabilitate individuals with handicaps.

(b) This subchapter applies to every individual who is seeking vocational rehabilitation services through the Division of Vocational Rehabilitation Services.

12:45-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Act" means the Rehabilitation Act, 29 U.S.C. §§701 et seq.

"Competitive work", as used in the definition of "supported employment," means work that is performed on a full-time basis or on a part-time basis, averaging at least 20 hours per week for each pay period, and for which an individual is compensated in accordance with the Fair Labor Standards Act, 29 U.S.C. §§201 et seq.

"Disabled public safety officer" means a non-severely disabled individual whose handicapping condition arose from a disability sustained in the line of duty while performing as a public safety officer and the immediate cause of such disability was a criminal act, apparent criminal act, or a hazardous condition resulting directly from the officer's performance of duties in direct connection with the enforcement, execution, and administration of law or fire prevention, firefighting, or related public safety activities.

"Division" means the Division of Vocational Rehabilitation Services (DVRS), New Jersey Department of Labor.

"Eligible" or "eligibility," when used in relation to an individual's qualification for vocational rehabilitation services, refers to a certification that:

1. An individual has a physical or mental disability which for that individual constitutes or results in a substantial handicap to employment, and

2. Vocational rehabilitation services may reasonably be expected to benefit the individual in terms of employability.

"Employability" means a determination that, with the provision of vocational rehabilitation services, the individual is likely to enter or retain, as a primary objective, full-time employment, or, if appropriate, part-time employment, consistent with the capacities or abilities of the individual in the competitive labor market; the practice of a profession; self-employment; homemaking; farm or family work (including work for which payment is in kind rather than in cash); sheltered employment; home-based employment; supported employment; or other gainful work.

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"Evaluation of vocational rehabilitation potential" means, as appropriate, in each case:

*[1. A preliminary diagnostic study to determine that an individual is eligible for vocational rehabilitation services;

2. A thorough diagnostic study consisting of a comprehensive evaluation of pertinent factors bearing on the individual's handicap to employment and vocational rehabilitation potential, in order to determine which vocational rehabilitation services may be of benefit to the individual in terms of employability;

3. Any other goods or services, including rehabilitation engineering services, necessary to determine the nature of the handicap and whether it may reasonably be expected that the individual can benefit from vocational rehabilitation services in terms of employability;

4. Referral to other agencies or organizations, when appropriate; and

5. The provision of vocational rehabilitation services to an individual during an extended evaluation of rehabilitation potential for the purpose of determining whether the individual is an individual with handicaps for whom a vocational goal is feasible.]*

***1. A preliminary diagnostic study to determine that the individual has a substantial handicap to employment, and that vocational rehabilitation services are needed;**

2. A diagnostic study consisting of a comprehensive evaluation of pertinent medical, psychiatric, psychological, vocational, educational, cultural, social, recreational, and environmental factors which bear on the individual's handicap to employment and rehabilitation potential including, to the degree needed, an evaluation of the individual's employability, personality, intelligence level, educational achievements, work experience, vocational aptitudes and interests, personal and social adjustments, employment opportunities, and other pertinent data helpful in determining the nature and scope of services needed;

3. An appraisal of the individual's patterns of work behavior and ability to acquire occupational skill, and to develop work attitudes, work habits, work tolerance, and social behavior patterns suitable for successful job performance, including the utilization of work simulated or real, to assess and develop the individual's capacities to perform adequately in a work environment;

4. Any other goods or services provided for the purposes of ascertaining the nature of the handicap and whether it may reasonably be expected that the individual can benefit from vocational rehabilitation services;

5. Referral;

6. The administration of these evaluation services;

7. The provision of vocational rehabilitation services to any individual for a total period not in excess of eighteen months for the purpose of determining whether such individual is an individual with handicaps, an individual with handicaps for whom a vocational goal is not possible or feasible, or neither such individual; and an assessment, at least once in every ninety-day period during which such services are provided, of the results of the provision of such services to an individual to ascertain whether any of the determinations described in the preceeding clause of this paragraph may be made; and

8. Where appropriate, the provision of rehabilitation engineering services to any individual with a handicap to assess and develop the individual's capacities to perform adequately in a work environment (see 29 U.S.C. sec. 706(5)).*

"Extreme medical risk" means a risk of substantially increasing functional impairment or risk of death if medical services are not provided expeditiously.

"Family member" or "member of the family" means any relative by blood or marriage of an individual with handicaps and any other individual living in the same household with whom the individual with handicaps has a close interpersonal relationship.

"Impartial hearing officer" means an individual:

1. Who is not an employee of a public agency that is involved in any decision regarding the furnishing or denial of rehabilitation services to a vocational rehabilitation applicant or client. An individual is not an employee of a public agency solely because the individual is paid by that agency to serve as a hearing officer;

2. Who has not been involved in previous decisions regarding the vocational rehabilitation applicant or client;

3. Who has background and experience in, and knowledge of, the delivery of vocational rehabilitation services; and

4. Who has no personal or financial interest that would be in conflict with the individual's objectivity.

"Individual with handicaps" means an individual:

1. Who has a physical or mental disability which for that individual constitutes or results in a substantial handicap to employment; and

2. Who can reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services, or for whom an extended evaluation of vocational rehabilitation potential is necessary to determine whether the individual might reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services.

"Individual with severe handicaps" means an individual:

1. Who has a severe physical or mental disability which seriously limits one or more functional capacities (mobility, communication, self-care, self-direction, work tolerance, or work skills) in terms of employability;

2. Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended peirod of time; and

3. Who has one or more physical or mental disabilities resulting from amputation, arthritis, *[blindness,]* cancer, cerebral palsy, cystic fibrosis, deafness, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, specific learning disability, and end-stage renal disease, or another disability or combination of disabilities determined on the basis of an evaluation of rehabilitation potential to cause comparable substantial functional limitation.

"Integrated work setting," as used in the definition of "supported employment," means job sites where:

1. Most co-workers are not handicapped, and individuals with handicaps are not part of a work group of other individuals with handicaps; or

2. Most co-workers are not handicapped, and if a job site described in paragraph 1 above is not possible, individuals with handicaps are part of a small work group of not more than eight individuals with handicaps; or

3. If there are no co-workers or the only co-workers are members of a small work group of not more than eight individuals, all of whom have handicaps, individuals with handicaps have regular contact with non-handicapped individuals, other than personnel providing support services, in the immediate work setting.

"Physical and mental restoration services" means:

1. Medical or corrective surgical treatment;

2. Diagnosis and treatment for mental or emotional disorders by a physician skilled in the diagnosis and treatment of such disorders or by a psychologist licensed or certified in accordance with State laws and regulations;

3. Dentistry;

4. Nursing services *[(in conjunction with other medical and healthcare services and upon recommendation of a physician)]*;

5. Necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;

6. Convalescent or nursing home care;

7. Drugs and supplies;

8. Prosthetic, orthotic or other assistive devices including hearing aids, essential to obtaining or retaining employment;

9. Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids, prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select (All cases involving blind and visually impaired individuals with a level of visual functioning directly impacting on the handicap to employment shall be referred to the New Jersey Commission for the Blind and Visually Impaired for services.);

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10. Podiatry *[(in conjunction with other medical and healthcare services and upon recommendation of a physician)]*;
11. Physical therapy;
12. Occupational therapy;
13. Speech or hearing therapy;
14. Psychological services;
15. Therapeutic recreation services;
16. Medical or medically related social work services;
17. Treatment of either acute or chronic medical complications and emergencies which are associated with or arise out of the provision of physical and mental restoration services; or which are inherent in the condition under treatment;
18. Special services for the treatment of individual suffering from end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and
19. Other medical or medically related rehabilitation services that would contribute to the reduction or elimination of barriers to employment including art therapy, dance therapy, music therapy and psychodrama.

"Physical or mental disability" means a physical or mental condition which materially limits, contributes to limiting or, if not corrected, will probably result in limiting an individual's employment activities or vocational functioning.

"Rehabilitation engineering" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by individuals with handicaps in areas that include education, rehabilitation, employment, transportation, independent living, and recreation.

"Substantial handicap to employment" means that a physical or mental disability (in light of attendant medical, psychological, vocational, educational, and other related factors) impedes an individual's occupational performance, by preventing the obtaining, retaining, or preparing for employment consistent with the individual's capacities and abilities.

"Supported employment" means:
1. Competitive work in an integrated work setting with ongoing support services for individuals with severe handicaps for whom competitive employment:
i. Has not traditionally occurred; or
ii. Has been interrupted or intermittent as a result of severe handicaps; or
2. Transitional employment for individuals with chronic mental illness.

"Vocational rehabilitation services" means *[time-limited]* services that are dedicated to the reduction or elimination of the barriers to *[employment]* ***employability***.
1. When provided to an individual, also means those services listed in N.J.A.C. 12:45-1.13.
2. When provided for the benefit of groups of individuals, also means:
i. The establishment of a rehabilitation facility;
ii. The construction of a rehabilitation facility;
iii. The provision of other facilities and services, including services provided at rehabilitation facilities, which promise to contribute substantially to the rehabilitation of a group of individuals but which are not related directly to the individualized written rehabilitation program of any one individual with handicaps;
iv. The use of existing telecommunications systems; and
v. The use of services providing captioned films or video cassettes for deaf persons.

12:45-1.3 Processing applications and referrals

(a) Each individual seeking vocational rehabilitation services shall complete an application which can be obtained from any local Division office. If the individual is a referral, the person or agency making the referral may complete the application on behalf of the individual. If the individual is incapable of completing an application, the individual's parent, guardian or representative may complete the application.

(b) Each individual or representative shall submit the application and any available medical or psychiatric records relating to disability to the nearest Division office.

(c) Upon reviewing the application, a Division counselor shall arrange an appointment for the individual at the nearest local Division office. If the individual cannot travel, the counselor may visit the individual.

(d) Each individual referred for vocational rehabilitation services shall be interviewed by a counselor as soon as possible after referral.

(e) If the information received from an individual or his or her representative indicates legal blindness (N.J.S.A. 30:6-18(a)), visual impairment (N.J.S.A. 30:6-18(c)) or demonstrates other indications of possible eligibility for services provided by the New Jersey Commission for the Blind and Visually Impaired, as outlined in the Agreement of Cooperation between the Division and the New Jersey Commission for the Blind and Visually Impaired, that individual shall be referred to the Commission for vocational rehabilitation and other services.

12:45-1.4 Eligibility for vocational rehabilitation services

(a) An individual shall be eligible for vocational rehabilitation services if the counselor determines that the following exists:
1. A physical or mental disability which for the individual constitutes or results in a substantial handicap to employment; and
2. A reasonable expectation that vocational rehabilitation services may benefit the individual in terms of employability.

(b) Each counselor shall apply the eligibility requirements without regard to sex, race, age, creed, color or national origin of the individual applying for service.

(c) No group of individuals shall be excluded or found ineligible solely on the basis of the type of disability.

(d) No upper or lower age limit shall be established which will in and of itself, result in a finding of ineligibility for any individual with handicaps who otherwise meets the eligibility requirements set forth in (a) above.

(e) No residence requirement, durational or other, shall be established which excludes from services any individual who is present in the State.

(f) Each counselor shall advise his or her client, at least once annually, of the prohibitions against discrimination set forth in (b) above.

12:45-1.5 Evaluation of vocational rehabilitation potential: preliminary diagnostic study

(a) In order to determine whether any individual is eligible for vocational rehabilitation services, the counselor shall conduct a preliminary diagnostic study to determine:
1. Whether the individual has a physical or mental disability which for that individual constitutes or results in a substantial handicap to employment; and
2. Whether vocational rehabilitation services may reasonably be expected to benefit the individual in terms of employability, or whether an extended evaluation of vocational rehabilitation potential is necessary to make this determination.

(b) The preliminary diagnostic study shall include:
1. An appraisal of the current general health status of the individual based, to the maximum extent possible, on available medical information; *[and]*
2. An evaluation by the appropriate medical specialist when necessary to determine the current status of the disorder*[.]**; **and***
3. As appropriate, evaluations by qualified personnel of the potential to benefit from rehabilitation engineering services.

(c) In all cases of mental or emotional disorder, an examination shall be provided by a physician skilled in the diagnosis and treatment of such disorders, or by a psychologist licensed in accordance with the laws and rules of the State of New Jersey. In cases of mental retardation, reports from certified school psychologists may be used to document the disability.

(d) If appropriate, an individual may select his or her own physicians to conduct the necessary medical examinations provided the physician will accept Division fees.

12:45-1.6 Evaluation of vocational rehabilitation potential: thorough diagnostic study

(a) Upon determination of eligibility, the counselor shall conduct a thorough diagnostic study to determine the nature and scope of services needed by the individual.

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(b) The thorough diagnostic study includes in all cases to the degree needed, an appraisal of the individual's:

1. Functional capacities and limitations;
2. Personality;
3. Intelligence level;
4. Educational achievement;
5. Work experience;
6. Personal, vocational and social adjustment;
7. Employment opportunities;
8. Patterns of work behavior;
9. Ability to acquire occupational skill;
10. Capacity for successful job performance;
11. Employability;
12. Need for rehabilitation engineering services; and
13. Other pertinent data.

12:45-1.7 Extended evaluation to determine vocational rehabilitation potential

(a) Eligibility for vocational rehabilitation services under a plan for extended evaluation shall be determined only upon:

1. The presence of a physical or mental disability which for the individual constitutes or results in a substantial handicap to employment; and

2. An inability to make a determination that vocational rehabilitation services might benefit the individual in terms of employability unless there is an extended evaluation to determine vocational rehabilitation potential.

(b) The extended evaluation period shall begin on the date of certification for extended evaluation to determine rehabilitation potential.

1. Only one 18-month maximum period shall be permitted during the time that the case is open.

2. If a case has been closed because of a determination that the individual's needs have changed, the case may be re-opened and a subsequent evaluation of vocational rehabilitation potential may be carried out.

(c) Vocational rehabilitation services, authorized after the expiration of the extended evaluation period, shall be provided only if the certification of eligibility has been executed by the counselor.

(d) The individual's progress during the extended evaluation plan shall be assessed as frequently as necessary but at least once every 90 days. This assessment shall include periodic reports from the facility or person providing the services and be used to determine whether the individual may be eligible or ineligible.

(e) The extended evaluation shall be terminated at any time before the end of the 18-month extended evaluation when:

1. The individual is found eligible for vocational rehabilitation services since there is a reasonable assurance that he or she can be expected to benefit in terms of employability from vocational rehabilitation services; or

2. The individual is found ineligible for any additional vocational rehabilitation services since it has been determined on the basis of clear evidence that he or she cannot be expected to benefit in terms of employability from vocational rehabilitation services.

12:45-1.8 Certification: eligibility; extended evaluation to determine vocational rehabilitation potential; ineligibility

(a) Before or at the same time that an individual with handicaps is accepted for vocational rehabilitation services, there shall be a certification that the individual has met the basic eligibility requirements as set forth in N.J.A.C. 12:45-1.4.

1. The certification of eligibility shall be dated and signed by the counselor.

(b) Before and as a basis for providing an extended evaluation to determine vocational rehabilitation potential, there shall be a certification that the individual has met the requirements in N.J.A.C. 12:45-1.7(a).

1. The certification for extended evaluation shall be signed and dated by the counselor.

(c) Whenever the counselor determines on the basis of clear evidence that an applicant or recipient of vocational rehabilitation is ineligible for services, the counselor shall sign and date a certification.

1. The certification shall contain the following:

i. The reasons for the ineligibility determination;

ii. A statement that the determination is made only after full consultation with the individual or, as appropriate, the individual's parent, guardian, or other representative, or after giving a clear opportunity for this consultation; and

iii. *[When appropriate, a]* ***A*** detailed explanation of the availability of the resources within a client assistance project established under section 112 of the Act, and a statement that referral is made to other agencies and facilities, including when appropriate, the State's independent living program.

(d) The ineligibility determination shall be reviewed within 12 months.

1. A review of an ineligibility determination shall not be conducted in situations where the individual has refused the review, the individual is no longer present in the State, the individual's whereabouts are unknown, or the individual's medical condition is rapidly progressive or terminal.

(e) The counselor may close a case without any determination of eligibility when an applicant is unavailable during an extended period of time to complete an evaluation of vocational rehabilitation potential and the counselor has made repeated efforts to contact the individual and to encourage his or her participation.

12:45-1.9 Order of selection for services

(a) In the event a shortage of funds precludes the provision of services to all eligible clients, the Director shall invoke an order of selection.

(b) After documentation of eligibility and execution of Certification of Eligibility, the following priorities will be followed according to the Director's determination of how many *[categories]* ***priorities*** can be served. The order of selection is as follows:

Priority 1. Clients classified as severely handicapped;

Priority 2. Disabled public safety officers;

Priority 3. Non-severely disabled individuals who are also clients of other agencies with whom the Division has written agreements of shared service responsibility; and

Priority 4. All other clients.

(c) If the Division cannot serve every individual within *[a]* ***the*** designated *[category]* ***priority group*** due to the amount of available funds, then the Division will provide services to clients in the order in which they applied for services.

Example: If all severely handicapped in priority 1 cannot be served due to lack of available funds, then services will be provided to those clients determined to be priority 1, in the order in which they applied for services.

(d) When imposed, the order of selection shall not preclude;

1. Clients whose eligibility was determined prior to the implementation date;

2. Diagnostics necessary to establish a client's eligibility;

3. No-cost services;

4. Post-employment services; and

5. Programs and services funded under sources other than Title I of the Act (Independent Living; Supported Employment; Fairlawn Deaf Program).

12:45-1.10 Case record for the individual

(a) Each counselor shall maintain for each applicant for, and recipient of, vocational rehabilitation services a case record which shall include, to the extent pertinent, the following information:

1. Documentation concerning the preliminary diagnostic study supporting the determination of eligibility, the need for an extended evaluation of vocational rehabilitation potential, and, as appropriate, documentation concerning the thorough diagnostic study supporting the nature and scope of vocational rehabilitation services to be provided;

2. In the case of an individual who has applied for vocational rehabilitation services and has been determined to be ineligible, documentation specifying the reasons for the ineligibility determination, and noting a review of the ineligibility determination carried out not later than 12 months after the determination was made;

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3. Documentation supporting any determination that the individual's handicaps are severe;

4. Documentation as to periodic assessment of the individual during an extended evaluation of vocational rehabilitation potential;

5. An individualized written rehabilitation program and any amendments to the program;

6. In the event that physical and mental restoration services are provided, documentation supporting the determination that the clinical status of the individual with handicaps is stable or slowly progressive unless the individual is being provided an extended evaluation of rehabilitation potential;

7. Documentation supporting any decision to provide services to family members;

8. Documentation relating to the participation by the individual with handicaps in the cost of vocational rehabilitation services if the State unit elects to condition the provision of services on the financial need of the individual;

9. Documentation relating to the eligibility of the individual for any similar benefits, and the use of any similar benefits;

10. Documentation that the individual has been advised of the confidentiality of all information pertaining to his or her case, and documentation and other material concerning any information released about the individual with handicaps with his or her written consent;

11. Documentation as to the reason for closing the case including the individual's employment status and, if determined to be rehabilitated, the basis on which the employment was determined to be suitable;

i. The case of an individual who has been provided vocational rehabilitation services under an individualized written program but who has been determined after the initiation of these services to be no longer capable of achieving a vocational goal, documentation of any reviews of this determination shall be included in the record;

12. Documentation of any plans to provide post-employment services after the employment objective has been achieved, the basis on which these plans were developed, and a description of the services provided and the outcomes achieved; and

13. Documentation concerning any action and decision involving the individual's request for review of rehabilitation counselor or coordinator determinations.

12:45-1.11 Individualized written rehabilitation program: procedures

(a) When a counselor determines that an individual is eligible for vocational rehabilitation services or that a period of extended evaluation is necessary to determine rehabilitation potential, an individualized written rehabilitation program shall be prepared for the individual.

(b) The counselor shall develop the individualized written rehabilitation program with the participation of the client or his or her parent, guardian or other representative.

(c) The counselor shall monitor the individualized written rehabilitation program to assure that services are being provided in accord with the written program.

(d) The counselor shall provide a copy of the written program and any amendments to the client or his or her parent, guardian or other representative including other suitable professional and informed advisors.

(e) The counselor shall inform the individual of all the requirements affecting the development, initiation and review of the individualized written rehabilitation program.

(f) The counselor shall review the individualized written rehabilitation program as often as necessary but at least on an annual basis.

1. Each individual with handicaps or, as appropriate, that individual's parent, guardian, or other representative, shall be given an opportunity to review the program and, if necessary, jointly redevelop, and agree to its terms.

12:45-1.12 Contents of the individualized written rehabilitation program

(a) The written rehabilitation program shall be based on a determination of employability designed to achieve the vocational goal of the individual and shall be developed through assessments of the individual's particular rehabilitation needs. Each individualized written rehabilitation program shall, as appropriate, include, but not be limited to, statements concerning:

1. The basis on which a determination of eligibility has been made, or the basis on which a determination has been made that an extended evaluation of vocational rehabilitation potential is necessary to make a determination of eligibility;

2. The long-range and intermediate rehabilitation objectives established for the individual based on an assessment determined through an evaluation of rehabilitation potential;

3. The specific rehabilitation services to be provided to achieve the established rehabilitation objectives including, if appropriate, rehabilitation engineering services;

4. An assessment of the expected need for post-employment services;

5. The projected dates for the initiation of each vocational rehabilitation service, and the anticipated duration of each service;

6. A procedure and schedule for periodic review and evaluation of progress toward achieving rehabilitation objectives based upon objective criteria, and a record of these reviews and evaluations;

7. A reassessment, prior to case closure, of the need for post-employment services;

8. The views of the individual with handicaps, or, as appropriate, that individual and a parent, guardian, or other representative, including other suitable professional and informed advisors, concerning the individual's goals and objectives and the vocational rehabilitation services being provided;

9. The terms and conditions for the provisions of vocational rehabilitation services, including responsibilities of the individual with handicaps in implementing the individualized written rehabilitation program, the extent of client participation in the cost of services, if any, and the extent to which comparable services and benefits are available to the individual under any other program;

10. An assurance that the individual with handicaps has been informed of that individual's rights and the means by which the individual may express and seek remedy for any dissatisfaction, including the opportunity for a review of rehabilitation counselor or coordinator determinations;

11. An assurance that the individual with handicaps has been provided a description of the availability of a client assistance program established under section 112 of the Act;

12. The basis on which the individual has been determined to be rehabilitated; and

13. The plans for the provision of post-employment services after a suitable employment goal has been achieved and the basis on which those plans are developed, and, if appropriate for individuals with severe handicaps, a statement of how these services will be provided or arranged through cooperative agreements with other service providers.

(b) Each individualized written rehabilitation program shall also contain, for individuals with severe handicaps for whom a vocational objective of supported employment has been determined to be appropriate:

1. A description of the time-limited services, not to exceed 18 months in duration, to be provided by the State; and

2. A description of the extended services needed, an identification of the State, Federal, or private programs that will provide the continuing support, and a description of the basis for determining that continuing support is available.

12:45-1.13 Vocational rehabilitation services for individuals

(a) The following vocational rehabilitation services shall be available:

1. Evaluation of vocational rehabilitation potential, including diagnostic and related services incidental to the determination of eligibility for, and the nature and scope of services to be provided;

2. Counseling and guidance, including personal adjustment counseling, to maintain a counseling relationship throughout the program of services for an individual with handicaps, referral necessary to help individuals with handicaps secure needed services from other agen-

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cies, and advising clients and client applicants about client assistance programs under 34 CFR Part 370.

3. Physical and mental restoration services, necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive;

4. Vocational and other training services, including personal and vocational adjustment, books, tools, and other training materials except that no training or training services in institutions of higher education (universities, colleges, community/junior colleges, vocational schools, technical institutes, or hospital schools of nursing) may be paid for with funds under this paragraph unless maximum efforts have been made by the counselor to secure grant assistance in whole or in part from other sources;

5. Maintenance, including payments, not exceeding the estimated cost of subsistence and provided at any time after vocational rehabilitation services have begun through the time when post-employment services are being provided. For an individual with handicaps, maintenance covers basic living expenses, such as food, shelter, clothing, and other subsistence expenses which are necessary to support and derive the full benefit of the other vocational rehabilitation services being provided;

6. Transportation, including necessary travel and related expenses including subsistence during travel (or per diem payments in lieu of subsistence) in connection with transporting individuals with handicaps and their attendants or escorts for the purpose of supporting and deriving the full benefit of the other vocational rehabilitation services being provided. Transportation may include relocation and moving expenses necessary for achieving a vocational rehabilitation objective;

7. Services to members of *[an individual with handicaps]* ***a clients*** family when necessary to the vocational rehabilitation of the handicapped individual;

8. Interpreter services and notetaking services for the deaf;

9. Telecommunications, sensory and other technological aids and devices;

10. Recruitment and training services to provide new employment opportunities in the fields of rehabilitation, health, welfare, public safety, law enforcement, other appropriate public service employment, and occupations which are designated as indicative of having significant career growth and employment potential;

11. Placement in suitable employment;

12. Post-employment services necessary to maintain or regain other suitable employment*[. "To maintain or regain other suitable employment" shall not be construed to mean an upgrade of services]*;

13. Occupational licenses, including any license, permit or other written authority required by a State, city or other governmental unit to be obtained in order to enter an occupation or enter a small business, tools, equipment, initial stocks (including livestock) and supplies;

14. Rehabilitation engineering services; and

15. Other goods and services that can reasonably be expected to benefit an individual with handicaps in terms of employability.

12:45-1.14 Individuals determined to be rehabilitated

(a) In order to be determined rehabilitated, an individual must have been, as a minimum:

1. Determined to be eligible under N.J.A.C. 12:45-1.4;

2. Provided an evaluation of vocational rehabilitation potential, and counseling and guidance as essential vocational rehabilitation services;

3. Provided appropriate and substantial vocational rehabilitation services in accordance with the individualized written rehabilitation program; and

4. Determined to have achieved and maintained a suitable employment goal for at least 60 days.

(b) After an individual has been determined to be rehabilitated, the individual shall receive post-employment services if necessary to assist an individual to maintain or regain other suitable employment.

12:45-1.15 Participation by *[individuals with handicaps]* ***clients*** in the cost of vocational rehabilitation services

(a) The Division shall conduct a needs assessment for each *[individual with handicaps at the time services are to be provided]* ***client prior to or at the IWRP conference*** to establish how much financial participation, if any, *[the individual with handicaps]* ***client*** will provide toward the cost of services. The needs assessment shall be conducted as set forth below to ensure that equitable treatment is accorded to all *[individuals with handicaps]* ***clients*** in similar circumstances.

(b) The Division shall inform each *[individual with handicaps]* ***client*** that the agency reserves the right to request verification of the current financial situation of the *[individual with handicaps]* ***client***.

(c) Prior to or at the time of the individualized written rehabilitation program (IWRP) conference, the Division shall require each *[individual with handicaps]* ***client*** to *[sign a tax disclosure form which authorizes the Internal Revenue Service to release information to the Division from the latest tax return of the individual with handicaps]* ***submit a copy of the most recent tax return form***.

(d) Each *[individual with handicaps]* ***client*** shall provide the following information on form DVR-17 prior to the IWRP conference:

1. Name, Social Security number and date;

[2. All income sources for each member of the family of the individual with handicaps;]

*[3.]****2.*** Number of dependents in the family including the *[individual with handicaps]* ***client***;

*[4.]****3.*** Liquid assets of the family;

*[5.]****4.*** Extraordinary medical expenses of the family;

*[6.]****5.*** Extraordinary debt due to disability of the *[individual with handicaps]* ***client***;

*[7.]****6.*** Medical insurance of the *[individual with handicaps]* ***client***; and

*[8.]****7.*** A signed certification that the information provided on DVR-17 is true.

(e) The Division may require the *[individual with handicaps]* ***client*** to provide supporting data to verify the information on the DVR-17.

(f) Each *[individual with handicaps]* ***client*** must submit *[an IRS Tax Disclosure Form and]* a revised DVR-17 if there is a significant change in financial status or a request for post-employment services.

(g) Immediately upon receipt of a completed DVR-17, the Division shall review the form and calculate the amount of financial participation. The amount of financial participation shall be calculated as follows:

1. The total amount of expenses directly attributable to the disability shall be subtracted from the amount of excess ***weekly*** income reported by the *[individual with handicaps]* ***client***. "Excess ***weekly*** income" means the weekly gross income of the *[individual with handicaps]* ***client*** minus the weekly income allowance set forth in (h) below, plus the liquid assets reported by the *[individual with handicaps]* ***client*** minus the liquid asset allowance set forth in (i) below. ***"Liquid asset" means any personal property, or real estate other than a principal residence or any mixed property (such as a chattel real) to which the client has legal title, the unencumbered value of which shall be greater than the amounts established by (i) below.***

2. In cases where the service being provided is a total cost item, the *[individual with handicaps]* ***client*** shall contribute 10 times the amount of excess ***weekly*** income. Total cost item means, but is not limited to, wheelchairs, hearing aids, crutches and other appliances. The formula as set forth above shall be applied as follows:

i. If, after calculating the amount of excess income, the figure is a negative number, the *[individual with handicaps]* ***client*** is not required to participate in the payment of the cost of the item.

ii. If, after calculating the amount of excess ***weekly*** income, the figure is a positive number and is greater than the cost of the item, then the *[individual with handicaps]* ***client*** must pay for the entire cost of the item.

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iii. If, after calculating the amount of excess income, the figure is a positive number and is less than the cost of the item, then the *[individual with handicaps]* ***client*** must pay the difference between the total cost of the item and the amount of excess income.

3. Each *[individual with handicaps]* ***client*** who is over the age of 18 and living in his or her parent's home shall have only his or her own income considered in the financial participation calculation.

4. The Division may waive financial participation if the *[individual with handicaps]* ***client*** has extraordinary medical expenses which would preclude his or her participation in the cost of services.

(h) The current weekly income allowance, which the Division shall update annually by amending this subsection based on average income as determined by the United States Bureau of Labor Statistics, *Consumer Expenditure Survey*, shall be determined in accordance with the following table:

Number of Family Members	Weekly Income Allowance
1	*[$ 462]* ***$ 457***
2	*[562]* **** 557***
3	*[662]* **** 657***
4	*[762]* **** 757***
5	*[862]* **** 857***
6	*[962]* **** 957***
7	*[1062]* **** 1057***

For each additional family member, add $100 to the weekly income allowance.

(i) The current liquid asset allowance which the Division shall update annually by amending this subsection shall be determined in accordance with the following table:

Number of Family Members	Liquid Asset Allowance
1	$20,000
2	22,000
3	24,000
4	26,000
5	28,000
6	30,000
7	32,000

For each additional family member, add $2,000 to the liquid asset allowance.

(j) The following services shall not be based on economic need:

1. Diagnostic;
2. Counseling and guidance;
3. Placement;
4. On-the-job training; *[and]*
5. Supported employment*[.]**; **and***
6. Work adjustment training.

12:45-1.16 Protection; use and release of personal information

(a) All personal information in the possession of the Division shall be used only for purposes directly connected with the administration of the vocational rehabilitation program. Information containing identifiable personal information may not be shared with advisory or other bodies which do not have official responsibility for administration of the program. In the administration of the program, the Division may obtain personal information from service providers and cooperating agencies under assurances that the information may not be further divulged, except as provided under (d), (e), and (f) below.

(b) The Division shall inform each applicant, client, representative of an applicant or client, and, as appropriate, service provider, cooperating agency, and interested person of the confidentiality of personal information and the conditions, for accessing and releasing this information.

(c) The Division shall provide individuals who are unable to communicate in English or who rely on special modes of communication with explanations about State policies and procedures affecting personal information through methods that can be adequately understood by them.

(d) The requirements for the release of information to an involved individual are set forth below. Involved individual means an individual for whom the Division has a case record (see N.J.A.C. 12:45-1.10).

1. When requested in writing by the involved individual or his or her representative, the Division shall make all information in the case record accessible to the individual or release it to him or her or a representative in a timely manner. Medical, psychological, or other information which the State unit believes may be harmful to the individual may not be released directly to the individual but shall be provided through his or her ***parent, guardian,*** representative, a physician or a licensed or certified psychologist. Harmful information means information which may be detrimental to the physical or emotional state of the involved individual or which may cause the individual to pose a threat to himself or herself or to others.

i. *[If medical or psychological information, the knowledge of which shall be harmful if disclosed to the client or applicant, is involved, the Division shall determine if the parent, guardian or representative is qualified to properly deal with the review of such information with the client or applicant.]* ***When requesting medical or psychological information, the Division will request the professional providing such information to include a statement as to whether the release of such information to the client could be harmful and should be restricted.***

ii. If the Division *[determines that the parent, guardian or representative is not qualified to properly deal with the review of medical or psychological information that is harmful to the client or applicant, the Division may provide a summary of the case record which excludes the harmful medical or psychological information to the parent, guardian or representative.]* ***questions the qualifications of the parent, guardian or representative to properly deal with the review of medical or psychological information that is harmful to the client or applicant, the Division will request a ruling by the Attorney General's office.***

2. When personal information has been obtained from another agency, or organization, it may be released only by, or under the conditions established by, the other agency or organization.

(e) The requirements for release of information for audit, evaluation, and research is as follows:

1. Personal information may be released to an organization, agency or individual engaged in audit, evaluation, or research only for purposes directly connected with the administration of the vocational rehabilitation program, or for purposes which would significantly improve the quality of life for handicapped persons, and only if the organization, agency, or individual assures that:

i. The information will be used only for the purposes for which it is being provided;

ii. The information will be released only to persons officially connected with the audit, evaluation or research;

iii. The information will not be released to the involved individual;

iv. The information will be managed to safeguard confidentiality; and

v. The final product will not reveal any personal identifying information without the informed written consent of the involved individual, or his or her representative.

(f) The requirements for release of information to other programs or authorities is as follows:

1. Upon receiving the informed written consent of the individual, the Division may release to another agency or organization for its program purposes only that personal information which may be released to the involved individual, and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program. Medical or psychological information which the Division believes may be harmful to the individual may be released when the other agency or organization assures the State unit that the information will be used only for the purposes for which it is being provided and will not be further released to the involved individual;

2. The Division shall release personal information if required by Federal law;

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3. The Division shall release personal information in response to investigations in connection with law enforcement, fraud, or abuse, (except where expressly prohibited by Federal or State laws or regulations), and in response to judicial order; and

4. The Division may also release personal information in order to protect the individual or others when the individual poses a threat to his or her safety or to the safety of others.

12:45-1.17 Appeal of vocational rehabilitation applicant or recipient

(a) *[Applicants]* ***All applicants***/clients for vocational rehabilitation shall be advised of their right to a review in the event that they are dissatisfied with any *[action]* ***determination*** with regard to the furnishing or denial of vocational rehabilitation services.

1. A review must be requested in writing by the applicant or client. This written request should be submitted to the *[office manager]* ***Director, Division of Vocational Rehabilitation Services***.

2. The review shall be held at a time and place convenient for the applicant or client.

3. The applicant or client will be notified of the date, time, and place of the review. The notification will be sent in advance of the review and provide enough time for the applicant or client to prepare for the review.

4. The applicant or client may be represented by counsel, friend, Client Assistance Program located in the Department of the Public Advocate, parent, guardian, *[or]* self, *[if he or she chooses to represent himself or herself, he or she must be an adult, 18 years of age or older.]* ***or other representative. All correspondence, decisions, scheduling of fair hearing, or other documents sent to the client, which are related to the appeal will be copied and sent to the representative.***

5. The applicant or client and his or her representative, if he or she desires to have one, will be given an adequate opportunity for cross examination and to present evidence ***and/or witnesses*** on his or her behalf during the review.

6. The review shall be held before an impartial hearing officer within 45 days of the request by the applicant or client for a review.

7. The impartial hearing officer shall render a decision in writing and provide a full written report of his or her findings and the grounds for the decision to the client or his or her representative and to the DVRS Director within 30 days of the completion of the review.

8. Within 20 days of the mailing of the impartial hearing officer's decision to the applicant or client and the Director, the Director shall notify the applicant or client in writing of his or her intention to review the initial decision.

9. If the Director fails to notify such individuals within 20 days, the decision of the impartial hearing officer will be considered final.

10. If the Director decides to review the decision, such individuals may submit to the Director additional evidence and information relevant to a final decision with 15 days of the receipt of the Director's notice of intention to review.

11. A final decision shall be made in writing by the Director within 30 days of the mailing of the notice of intention to review and shall include a full report of the findings and the grounds for such decision. A copy of such decision shall be provided to such individuals.

STATE

(a)

DIVISION OF ELECTIONS

Election Rules

Adopted New Rules: N.J.A.C. 15:10

Proposed: January 2, 1991, at 23 N.J.R. 288(b).
Adopted: March 8, 1991 by Joan Haberle, Secretary of State.
Filed: March 13, 1991 as R.1991 d.191, **without change.**
Authority: N.J.S.A. 19:23-45 et seq., 19:4-10 et seq. and 19:31-6 et seq.
Effective Date: April 15, 1991.
Expiration Date: April 15, 1996.

Summary of Public Comments and Agency Responses:
The Department of State received comment from William Kattack, County Clerk of Passaic County advising that he has no objection to this readoption.

N.J.A.C. 15:10 expired in February 18, 1991, pursuant to Executive Order No. 66(1978). In accordance with N.J.A.C. 1:30-4.4(f), the expired rules proposed for readoption are adopted herein as new rules.

Full text of the adopted new rules, which were proposed for readoption, can be found in the New Jersey Administrative Code at N.J.A.C. 15:10.

TRANSPORTATION

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

Route N.J. 143 in Camden County

Adopted New Rule: N.J.A.C. 16:28-1.43

Proposed: January 22, 1991, at 23 N.J.R. 184(a).
Adopted: February 22, 1991, by Edward G. Baker, Acting Director, Division of Traffic Engineering and Local Aid.
Filed: March 18, 1991 as R.1991 d.196, **without change.**
Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-98.
Effective Date: April 15, 1991.
Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28-1.43 Route 143

(a) The rate of speed designated for State highway Route N.J. 143 described in this subsection shall be established and adopted as the maximum legal rate of speed.

1. For both directions of traffic:

i. In Camden County:

(1) Winslow Township:

(A) Zone 1: 45 miles per hour between Blue Anchor Road (County Road 561) and 1,320 feet north of Blue Anchor Road (railroad tracks) (approximate mileposts 0.00 to 0.25); thence

(B) Zone 2: 40 miles per hour between 1,320 feet north of Blue Anchor Road and 785 feet north of Center Drive (Road to Sewage Plant) (approximate mileposts 0.25 to 1.00); thence

(C) Zone 3: 50 miles per hour between 785 feet north of Center Drive and 950 feet south of Central Avenue (approximate mileposts 1.00 to 1.93); thence

(D) Zone 4: 40 miles per hour between 950 feet south of Central Avenue and Route U.S. 30 (approximate mileposts 1.93 to 2.27).

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(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Speed Limits
Routes U.S. 130 including parts of the Route I-295, Route U.S. 30 and Route U.S. 206
Adopted Amendment: N.J.A.C. 16:28-1.69

Proposed: January 22, 1991, at 23 N.J.R. 184(b).
Adopted: February 22, 1991, by Edward G. Baker, Acting Director, Division of Traffic Engineering and Local Aid.
Filed: March 18, 1991 as R.1991 d.197, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-98.

Effective Date: April 15, 1991.
Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28-1.69 Route U.S. 130 including parts of Route I-295, Route U.S. 30 and Route U.S. 206

(a) The rate of speed designated for State highway Route U.S. 130, including parts of Route I-295, Route U.S. 30 and Route U.S. 206 described in this subsection are established and adopted as the maximum legal rate of speed for both directions of traffic.

1.-4. (No change.)

5. Mercer County:

i. Hamilton Township, Washington Township and East Windsor Township:

(1) 55 miles per hour from Bordentown Township (Burlington County)-Hamilton Township (Mercer County) corporate line, through Hamilton Township, Washington Township and East Windsor Township to Hickory Corner Road (milepost 58.28 to 67.50); thence

(2) 50 miles per hour from Hickory Corner Road to 465 feet north of Birch Lane (Roadway Trailer Park) (milepost 67.50 to 69.12); thence

(3) 55 miles per hour from 465 feet north of Birch Lane to East Windsor Township (Mercer County)-Cranbury Township (Middlesex County) corporate line (milepost 69.12 to 70.05).

6. (No change.)

(b) (No change.)

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Speed Limits
Route N.J. 38 in Camden and Burlington Counties
Adopted Repeal and New Rule: N.J.A.C. 16:28-1.120

Proposed: January 22, 1991, at 23 N.J.R. 185(a).
Adopted: February 22, 1991, by Edward G. Baker, Acting Director, Division of Traffic Engineering and Local Aid.
Filed: March 18, 1991 as R.1991 d.198, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-98.

Effective Date: April 15, 1991.
Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28-1.120 Route 38

(a) The rate of speed designated for State highway Route 38 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. In Camden County:

(1) Pennsauken Township:

(A) 50 miles per hour between Route U.S. 30-Route U.S. 130 and the Pennsauken Township-Cherry Hill Township line (approximate mileposts 0.00 to 1.32); thence

(2) Cherry Hill Township:

(A) 50 miles per hour between the Pennsauken Township-Cherry Hill Township line and the Cherry Hill Township (Camden County)-Maple Shade Township (Burlington County) line (approximate mileposts 1.32 to 4.40); thence

ii. In Burlington County:

(1) Maple Shade Township:

(A) 50 miles per hour between the Cherry Hill Township (Camden County)-Maple Shade Township (Burlington County) line and the Maple Shade Township-Moorestown Township line (approximate mileposts 4.40 to 6.10); thence

(2) Moorestown Township:

(A) 50 miles per hour between the Maple Shade Township-Moorestown Township line and the Moorestown Township-Mount Laurel Township line (approximate mileposts 6.10 to 8.84); thence

(3) Mount Laurel Township:

(A) 50 miles per hour between the Moorestown Township-Mount Laurel Township line and the Mount Laurel Township-Hainesport Township line (approximate mileposts 8.84 to 12.49); thence

(4) Hainesport Township:

(A) 50 miles per hour between Mount Laurel Township-Hainesport Township line and the Hainesport Township-Lumberton Township line (approximate mileposts 12.49 to 15.29); thence

(5) Lumberton and Mount Holly Townships:

(A) 50 miles per hour between the Hainesport Township-Lumberton Township line (extending through Mount Holly Township) and the Lumberton Township-Southampton Township line (approximate mileposts 15.29 to 18.30); thence

(6) Southampton Township:

(A) 50 miles per hour between Lumberton Township-Southampton Township line and Route U.S. 206 (approximate mileposts 18.30 to 19.23).

(c)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Restricted Stopping and Standing
Route N.J. 28 in Union County
Adopted Amendment: N.J.A.C. 16:28A-1.19

Proposed: January 22, 1991, at 23 N.J.R. 186(a).
Adopted: February 22, 1991, by Edward G. Baker, Acting Director, Division of Traffic Engineering and Local Aid.
Filed: March 18, 1991 as R.1991 d.200, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-138.1.

Effective Date: April 15, 1991.
Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

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16:28A-1.19 Route 28

(a) The certain parts of State highway Route 28 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.

1. (No change.)

2. No stopping or standing in the Borough of Roselle Park, Union County:

i.-iv. (No change.)

v. Along the south side, from 9:00 A.M. to 11:00 A.M., Tuesday within the entire corporate limits.

vi.-viii. (No change.)

3.-13. (No change.)

(b)-(e) (No change.)

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping
Route U.S. 206 in Mercer County

Adopted Amendment: N.J.A.C. 16:28A-1.57

Proposed: January 7, 1991 at 23 N.J.R. 53(a).

Adopted: February 7, 1991 by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Filed: March 18, 1991 as R.1991 d.201, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-139.

Effective Date: April 15, 1991.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: J.V. D'Ambrisi, of Princeton, New Jersey, expressed support for the proposed change and asked that the stopping or standing restriction be extended in a southerly direction from Edgerstoune Road to Quaker Road.

RESPONSE: The Division appreciates the support for the proposed change. The extension of the restricted stopping or standing area from Edgerstoune Road to Quaker Road is too substantive to be made on adoption; however, the Division will consider it and may propose such a change in a future rulemaking.

Full text of the adoption follows.

16:28A-1.57 Route U.S. 206

(a) The certain parts of State highway Route U.S. 206 described in this subsection shall be designated and established as "no stopping or standing" zones:

1.-11. (No change.)

12. No stopping or standing along both sides in Princeton Township, Mercer County:

i. (No change.)

ii. From the northerly Princeton Borough-Princeton Township corporate line to Mansgrove Road;

iii. From the northerly curb line of Edgerstoune Road to the southerly Princeton Township-Princeton Borough corporate line.

13.-23. (No change.)

(b)-(c) (No change.)

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping
Route N.J. 67 in Bergen County

Adopted Amendment: N.J.A.C. 16:28A-1.71

Proposed: January 22, 1991, at 23 N.J.R. 186(b).

Adopted: February 22, 1991, by Edward G. Baker, Acting Director, Division of Traffic Engineering and Local Aid.

Filed: March 18, 1991 as R.1991 d.202, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-199.

Effective Date: April 15, 1991.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:28A-1.71 Route 67

(a) The certain parts of State highway Route 67 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1. Along the westerly (southbound) side in Fort Lee Borough, Bergen County:

i. Along Lemoine Avenue:

(1) (No change.)

(2) Near side bus stops:

(A)-(D) (No change.)

(E) Forest Road—Beginning at the northerly curb line of Forest Road and extending 105 feet northerly therefrom.

(3) (No change.)

ii. Along Palisade Avenue:

(1) Far side bus stops:

(A) (No change.)

Recodify as (B) (No change in text.)

2.-3. (No change.)

(b)-(c) (No change.)

(c)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Turns Prohibitions
Route U.S. 9 in Ocean County

Adopted Amendment: N.J.A.C. 16:31-1.29

Proposed: January 22, 1991, at 23 N.J.R. 187(a).

Adopted: February 22, 1991, by Edward G. Baker, Acting Director, Division of Traffic Engineering and Local Aid.

Filed: March 18, 1991 as R.1991 d.199, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123 and 39:4-183.6.

Effective Date: April 15, 1991.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

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16:31-1.29 Route U.S. 9

(a) Turning movements of traffic on certain parts of State highway Route U.S. 9 described in this subsection are regulated as follows:

1. In Ocean County:

i. (No change.)

ii. Berkeley Township:

(1) No left turn southbound to eastbound on McDonald's driveway (approximately 400 feet south of Ocean Gate Drive).

(a)

DIVISION OF TRANSPORTATION ASSISTANCE BUREAU OF FREIGHT SERVICES

Transportation of Hazardous Materials General Requirements: Cargo Seals

Adopted Amendment: N.J.A.C. 16:49-1.3

Proposed: January 7, 1991 at 23 N.J.R. 55(b).

Adopted: February 11, 1991, by Robert A. Innocenzi, Deputy Commissioner (State Transportation Engineer), Department of Transportation, with the concurrence of Colonel J.J. Dintino, Superintendent, Division of State Police.

Filed: March 21, 1991 as R.1991 d.208, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:5B-25 et seq. (P.L. 1983, c.401).

Effective Date: April 15, 1991.

Expiration Date: February 8, 1995.

Summary of Public Comments and Agency Responses:

COMMENT: The Division of State Police reviewed the proposed amendment and recommended the insertion of the word "not" in the second sentence of N.J.A.C. 16:49-1.3(b)2, as indicated in the adopted text. The insertion of the word "not" will make the rule consistent with the current standard operating procedures of the Division of State Police regarding the inspection and breaking of cargo seals as outlined in Title 39:5B-31 of the Revised Statutes of the State of New Jersey.

RESPONSE: The Department thanks the Division of State Police for its recommendation, which has been incorporated in the rule adoption.

Full text of the adoption follows.

16:49-1.3 General requirements

(a) (No change.)

(b) Vehicles, railroad cars, containers, shipping records, carrier records, and places of origin in the state involved in the transportation of hazardous materials, substances, or wastes are subject to inspection by duly authorized representatives of the Division of State Police as may be necessary to carry out the provisions of N.J.S.A. 39:5B-25 et seq., and the regulations adopted supplementary thereto. Inspections shall be conducted as follows:

1. The Division of State Police, or personnel authorized by the Superintendent of the State Police, may break cargo seals on vehicles during the course of an inspection of the carrier's equipment under this chapter. Under no circumstances will U.S. Postal Service or Department of Defense seals or locks be broken for the purpose of inspecting cargo within any vehicle. If cargo is protected with a seal from any other U.S. Government agency, prior permission shall be obtained from such agency before removal of the seal.

2. Self-locking cargo seals inscribed with the appropriate New Jersey State agency designation and sequential number shall be affixed by the enforcement personnel to replace any cargo seal removed for inspection. In the event that the contents of a vehicle having no cargo seal, or a broken cargo seal, are inspected, the inspecting agency's cargo seal shall ***not*** be applied upon completion of the inspection.

3. Seals on tank vehicles shall not be broken except in an emergency situation which poses an immediate hazard to the public, as determined by the State Police, or personnel authorized by the Superintendent of State Police.

4. In the event that a cargo seal is to be broken for the purpose of inspecting the vehicle contents, the owner, operator, driver or yardmaster shall be requested to observe the inspection and sign the inspection report. The signature of a witness, preferably a New Jersey State Police Officer, will also be obtained.

5. Procedures to be used in conducting such inspections shall be as specified by the New Jersey State Police.

(c)-(1) (No change.)

(b)

NEW JERSEY TRANSIT CORPORATION

Procurement Policies and Procedures

Readoption: N.J.A.C. 16:72

Proposed: February 4, 1991, at 23 N.J.R. 290(a).

Adopted: March 18, 1991, by the New Jersey Transit Corporation, Shirley A. DeLibero, Executive Director.

Filed: March 20, 1991 as R.1991 d.206, **without change.**

Authority: N.J.S.A. 27:25-5(e).

Effective Date: March 20, 1991.

Expiration Date: March 20, 1996.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 16:72.

TREASURY-GENERAL

(c)

DIVISION OF PENSIONS

Police and Firemen's Retirement System Officers, Elections and Rate Assignments

Adopted Amendments: N.J.A.C. 17:4

Proposed: January 7, 1991, at 23 N.J.R. 24(d).

Adopted: March 14, 1991, by the Board of Trustees, Police and Firemen's Retirement System, Janice Nelson, Secretary.

Filed: March 19, 1991 as R.1991 d.203, **without change.**

Authority: N.J.S.A. 43:16A-13(7).

Effective Date: April 15, 1991.

Expiration Date: June 8, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

17:4-1.3 Officers and committees

(a) The chairman and vice chairman of the Board will be elected by a majority vote of the members in attendance at the first meeting of each fiscal year, not less than five members to be present at such a meeting.

(b) The chairman of the Board shall preside at all meetings that he or she attends and in his or her absence the vice chairman or, if absent, another member selected by the majority of the members in attendance will preside for that single meeting.

(c)-(e) (No change.)

17:4-1.4 Election of member-trustee

(a)-(b) (No change.)

(c) Nominating petitions:

1.-3. (No change.)

4. The petition form will require the name and employer and request the membership number or social security number of each petitioner.

5.-8. (No change.)

(d) Ballots:

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1.-8. (No change.)

9. The secretary of the Board will oversee the election to ensure that the vendor complies with all requirements and assure the validity of the final election count.

17:4-1.7 Appeal from Board decisions

The following statement shall be incorporated in every written notice setting forth the Board's determination in a matter where such determination is contrary to the claim made by the claimant or his or her legal representative:

"If you disagree with the determination of the Board of Trustees in this matter, you may appeal by sending a written statement to the Board within 45 days from the date of this letter informing the Board of your disagreements and all of the reasons therefor. If no such written statement is received within the 45 day period, this determination shall be considered final."

17:4-2.4 (Reserved)

17:4-3.4 Survivor benefits

(a) (No change.)

(b) In the instance of an active member who died in the performance of duty (accidental death), the initial pension payment will be for the month following the month in which the member died and the last payment will cover the month immediately preceding the month the survivor dies or ceases to qualify for the continuance of benefits.

17:4-4.7 Suspension

(a) A member suspended without pay will have insurance coverage continued for a period of 93 days following the effective date of such suspension.

(b)-(c) (No change.)

17:4-5.4 Methods of repayment

(a) Methods of repayment include:

1.-2. (No change.)

3. Extra deductions equal to at least one-half of the full regular pension deduction for a maximum period of 10 years.

4. (No change.)

17:4-6.10 Employer disability application: employee notice

(a) If an application for an accidental disability retirement benefit or for an ordinary disability retirement benefit is filed by an employer for one of his or her employees, the member will be promptly notified by letter that:

1.-7. (No change.)

17:4-6.12 Disability retirant; annual medical examination

(a) All disability retirants shall be required to undergo a medical examination each year for a maximum period of five years by a physician designated by the system as of the anniversary date of their retirement, unless such examination requirement has been waived by the board.

(b) (No change.)

17:4-6.13 Medical examinations; physicians

Where the statute prescribes that a physician be designated by the system to perform a medical examination, such physician shall be selected from the current membership directory of the Medical Society of New Jersey and the New Jersey Association of Osteopathic Physicians and Surgeons; however, in the cases of those members whose personal physician has identified them as having a probable abbreviated life expectancy, such "imminent death" cases may be processed without the necessity of an examination by a physician designated by the system if corroborating medical evidence of the diagnosis can be obtained.

17:4-6.14 Compulsory retirement

(a)-(f) (No change.)

(g) Should a member fail to file an "Application for Retirement Allowance" before his or her compulsory retirement date, no retirement checks will be disbursed until he or she files the required application.

(h)-(j) (No change.)

17:4-7.3 Intrafund transfers

(a) (No change.)

(b) A member transferring from the police to the fire department of the same employer may likewise continue his or her membership. Such a member may withdraw at such an occasion, but his or her reenrollment will be subject to age and physical requirements.

(a)

DIVISION OF PENSIONS

Police and Firemen's Retirement System
Work-Related Travel; Accidental Disability and Accidental Death Benefits

Adopted New Rule: N.J.A.C. 17:4-6.17

Proposed: December 17, 1990, at 22 N.J.R. 3707(b).

Adopted: March 12, 1991, by the Board of Trustees, Police and Firemen's Retirement System, Janice Nelson, Secretary.

Filed: March 19, 1991 as R.1991 d.204, **without change.**

Authority: N.J.S.A. 43:16A-13(7).

Effective Date: April 15, 1991.

Expiration Date: June 8, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

17:4-6.17 Work-related travel; accidental disability retirement and accidental death benefit coverage

(a) A member whose duties include regular or occasional travel in the course of employment will be considered in the "performance of his regular or assigned duties" for the purposes of accidental disability retirement or "in the actual performance of duty" for the purposes of accidental death benefits during employment-related travel as provided in this section. For the purposes of this section, "in performance of duty" means and includes both "performance of regular or assigned duties" and "in the actual performance of duty."

(b) If a member's duties require or authorize the member to travel between a regularly assigned office or workplace and other locations, or among other locations, the member is in performance of duty during travel between a regularly assigned office or workplace and other locations, or among other locations.

(c) If a member's duties require or authorize the member to travel between his or her place of residence and a location other than an office or workplace of the employer to which the member is regularly assigned or near to the regularly assigned office or workplace to perform the duties of the employment, the member is in performance of duty when he or she completely leaves the property of his or her residence and begins to travel to the other location, or until he or she begins entry to the property of residence after travel from the other location, and all expenses of the travel are paid for by the employer. A member's duties are considered to authorize or require travel from the place of residence to a location other than a regularly assigned office or workplace of the employer in the following situations:

1. The member's regular or assigned duties involve field work which requires or authorizes the member to travel to locations other than a regularly assigned office or workplace of the employer to perform his or her duties and do not require the member to report to a regularly assigned office or workplace before or after traveling to other locations. Travel by the member between a regularly assigned office or workplace of the employer and the place of residence of the member is not considered part of the member's duties.

2. The member's regular or assigned duties are usually performed at an office or workplace of the employer to which the member is regularly assigned but occasionally require or authorize travel to other locations.

3. The member is authorized or required by his or her employer to respond to an emergency situation outside of the member's regularly scheduled work hours, regardless of whether the member goes

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to a regularly assigned office or workplace or another location, or whether the expenses of the travel are paid for by the employer or the member.

4. The member is attending a meeting, seminar, convention or a similar type of work-related activity as authorized or required by the employer at a location other than a regularly assigned office or workplace, regardless of whether the expenses of the travel are paid for by the employer or the member. Where there are social or recreational activities associated with the work-related activity or attendance requires living accommodations, only travel to and from the general activity and participation in and travel to and from the work-related functions of the activity are considered part of the duties of the member. Activities related to social or recreational functions or living accommodations are not considered part of the duties of the member.

(d) In all cases, a certification from the employer is required and must include a copy of the member's job description, a statement of the member's work schedule on the day of the travel in question, and proof of or a statement by the employer that the travel was authorized or required by the employer and indicating who paid the travel expense.

OTHER AGENCIES

(a)

ELECTION LAW ENFORCEMENT COMMISSION

Definition of a Political Committee; Copying Fees Adopted Amendments: N.J.A.C. 19:25-1.7 and 2.4

Proposed: February 4, 1991 at 23 N.J.R. 292(a).

Adopted: March 20, 1991 by the Election Law Enforcement Commission, Frederick M. Herrmann, Ph.D., Executive Director.

Filed: March 21, 1991 as R.1991 d.207, **without change.**

Authority: N.J.S.A. 19:44A-6.

Effective Date: April 15, 1991.

Expiration Date: October 1, 1995.

Summary of Public Comments and Agency Responses:
No comment received.

Full text of the adoption follows.

19:25-1.7 Definitions

The following words and terms, when used in this chapter and in the interpretation of the act, shall have the following meanings, unless a different meaning clearly appears from the context.

. . .

"Political committee" means any group of two or more persons acting jointly, or any corporation, partnership or any other incorporated or unincorporated association which is organized to or does aid or promote the nomination, election or defeat of any candidate or candidates for public office, or which is organized to, or does aid or promote the passage or defeat of a public question in any election. A club organized to promote the candidacy of one or more candidates or aid or defeat the passage of a public question, without a term of existence substantially longer than the campaign, is a political committee. Political committee does not include:

1.-3. (No change.)

4. Except as set forth in paragraph 5 below of this definition, no person or persons holding elected or appointed public office in this State or any political subdivision thereof shall be deemed to be a political committee with respect to any public question by virtue of communication with their constituents or with public officials of the Federal government or of this or any other state or political subdivision thereof, or with the general public reasonably related to the duties of his or her public office.

5. Elected or appointed public officials, boards and commissions, and the members thereof, may become political committees with respect to a public question by virtue of fund raising or other election-related activities respecting such public questions.

. . .

19:25-2.4 Copies of documents; fees

(a) Photocopies of documents maintained by the Commission pursuant to N.J.A.C. 19:25-2.3 shall be provided at a fee of $0.50 per page for the first 10 pages, $0.25 per page for the eleventh through the twentieth pages, and $0.15 per page for all pages over 20 pages, and for purposes of establishing fees under this section a two-sided photocopy shall be deemed as two pages.

(b)-(c) (No change.)

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF WATER RESOURCES

Notice of Administrative Correction and Change Safe Drinking Water Rules Applicability of National Regulations N.J.A.C. 7:10-1.3 and 5.1

Take notice that the Department of Environmental Protection has requested, and the Office of Administrative Law has approved, administrative corrections and an administrative change to N.J.A.C 7:10-1.3 and 5.1 to clarify the Department's incorporation by reference of the National Primary Drinking Water Regulations, 40 CFR Part 141, and the primacy of the contaminant levels listed in N.J.A.C. 7:10-16 over those national regulations. In addition, the Bureau name and mailing address in N.J.A.C. 7:10-5.1 are changed.

The definition of "national primary drinking water regulations" at N.J.A.C. 7:10-1.3 and the reference to those regulations in N.J.A.C. 7:10-5.1 refer, respectively, to the "current" and "most current" versions of the regulations. Both rules were proposed and adopted (see 11 N.J.R. 170(a) and 374(b)) pursuant to N.J.S.A. 58:12A-4a(1) which, at that time, required the Department to promulgate State primary drinking water regulations that "at any given time" are no less stringent than the "interim or revised national primary drinking water regulations in effect at that time." This purpose was reiterated in both subsequent chapter readoptions (see 15 N.J.R. 592(a) and 1019(c); 21 N.J.R. 1945(a) and 3098(a)). The Department's use of the terms "current" and "most current" was intended to effectuate this legislative mandate, automatically incorporating by reference amended or supplemented versions of the national regulations. The Bureau of Safe Drinking Water has applied, through these rules, the most current national regulations in effect at the time of the application.

In order to remove any possible ambiguity in the incorporation by reference of the national regulations through the use of the terms "current" and "most current," the Department is administratively deleting both terms from the rules and adding, to the N.J.A.C. 7:10-1.3 definition of "national primary drinking water regulations," "as such regulations are amended or supplemented from time to time." This added phrase is in keeping with the incorporation by reference requirements of N.J.A.C. 1:30-2.2(c)1ii.

The purpose of N.J.A.C. 7:10-16, as described in its proposal (see 19 N.J.R. 2228(a)), is to set forth maximum contaminant levels for 16 of the 22 contaminants listed under P.L. 1983, c.443 (specifically as codified at N.J.S.A. 58:12A-13a). Both the national primary drinking water regulations, 40 CFR Part 141, and N.J.S.A. 58:12A-2 and 4a(1) permit State standards more stringent than the national regulations. The Department is adding a sentence to N.J.A.C. 7:10-5.1 in order to clarify the relationship of N.J.A.C. 7:10-16 to the national regulations incorporated by reference as the State standards. In addition, a reference to other sections in N.J.A.C. 7:10-5 is corrected to current Code form.

This notice of administrative correction and change is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

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7:10-1.3 . Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

. . .

"National primary drinking water regulations," **or "National Regulations,"** means the [current] primary drinking water regulations promulgated at 40 CFR Part 141 by the Administrator pursuant to the Federal Act, **as such regulations are amended or supplemented from time to time.**

. . .

7:10-5.1 Applicability of National Regulations

Except as provided in [sections 2, 3, and 4 of this subchapter] **N.J.A.C. 7:10-5.2, 5.3 and 5.4**, the Department hereby adopts in total the [most current] National [Primary Drinking Water Regulations (40 CFR, Part 141), hereinafter referred to as the National] Regulations, including all requirements pertaining to siting requirements, maximum contaminant levels, monitoring and analytical requirements, reporting, public notification and record keeping, as the New Jersey Primary Drinking Water Regulations. **Notwithstanding the Department's adoption of maximum contaminant levels set forth in the National Regulations, if any provision of N.J.A.C. 7:10-16 concerning maximum contaminant levels for hazardous contaminants is more stringent than the corresponding provision of the National Regulations, the provision of N.J.A.C. 7:10-16 shall control.** Copies of the [most current] National [Primary Drinking Water] Regulations [(40 CFR, Part 141)] may be obtained from either the Water Supply Branch, U.S. Environmental Protection Agency, 26 Federal Plaza, New York, New York, 10007, (212) 264-1800; or, Bureau of [Potable Water] **Safe Drinking Water**, Division of Water Resources, [P.O. Box] CN-029, Trenton, New Jersey, 08625, (609) 292-5550.

(a)

DIVISION OF WATER RESOURCES

New Jersey Pollutant Discharge Elimination System Fee Schedule for NJPDES Permittees and Applicants

Adopted Amendment: N.J.A.C. 7:14A-1.8

Proposed: December 17, 1990 at 22 N.J.R. 3679(a).

Adopted: March 22, 1991 by Scott A. Weiner, Commissioner, Department of Environmental Protection.

Filed: March 22, 1991 as R.1991 d.214, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 58:10A-1 et seq., specifically 58:10A-9.

DEP Docket Number: 041-90-11.

Effective Date: April 15, 1991.

Expiration Date: June 2, 1994.

The Department decided to propose amendments to the fee assessment methodology as a result of comments and suggestions received during the public comment period on the last proposal which was adopted by the Commissioner Yaskin on March 6, 1990 (see 22 N.J.R. 1124(a)). The Department initiated this process by publishing a pre-proposal on June 4, 1990 at 22 N.J.R. 1652(a). The Department held a public hearing on the pre-proposal on July 6, 1990 which was attended by about 60 people. Oral and written comments were received from 21 people. The Department considered the comments received when drafting this rule proposal which was published on Decemeber 17, 1990 (see 22 N.J.R. 3679(a)).

The Department held a public hearing on the proposed amendments to N.J.A.C. 7:14A-1.8 on January 24, 1991 at the Records Storage Center, 2300 Stuyvesant Avenue, Trenton, New Jersey. The public hearing was attended by 25 people. Oral comments were received from 12 people. The public comment period closed on January 28, 1991. Written comments were received from 26 people. The following persons provided written or oral comments on the rule proposal:

Joseph Mink	Campbell-Pratt Oil Company
Richard Hampson	Garden State Paper Company
Renee Bobal	Hoffmann-LaRoche
Will Martin	Martin Corporation
John Sandstedt	Sybron Chemicals
Hal Bozarth	Chemical Industry Council (CIC/NJ)
J.T. Wharton	Air Products and Chemicals
Jerome Sheehan	Bergan County Utilities Authority
Michael Hart	Carpenter Technology Corporation
A. Michael Fernadez	Cumberland County Utilities Auth.
Albert Boettler	Dupont
Alfred Pagano	Dupont
Marwan Sadat	for Edgeboro Disposal
Marwan Sadat	for Four Star Products
Marwan Sadat	for Metec, Inc.
Angel Chang	Safety-Kleen
Marwan Sadat	for Square D
Robert Collins	Monmouth County Chosen Freeholders
Marwan Sadat	for Wentzel Tile
Judith B. Appel, Esq.	for West New York and Kearny
Sandra Grenci	Rahway Valley Sewerage Authority
Robert Ranieri	Hoboken Union City Weehawken S.A.
J.A. Shissias	Public Services Electric and Gas
Ezra Bixby	Stony Brook Regional Sewerage Auth.
William Goelzer	Landis Sewerage Authority
Herbert Bennett	Struthers-Dunn
Russell Nerlick	Western Monmouth UA
William MacNair	Air Products & Chemicals, Inc.
John Gulliford	Methode Electronics, Inc.
Richard W. Watson	Birdsall Eng. Co.-Monmouth County
Julius P. Rakus	Alpha Chemical & Plastics

Summary of Hearing Officer Recommendations and Agency Response:

Debra Hammond, Administrative Analyst 1, Division of Water Resources, Department of Environmental Protection, served as hearing officer at the January 24, 1991 public hearing on the proposed amendments to N.J.A.C. 7:14A-1.8. After reviewing the testimony presented at the public hearing Debra Hammond recommended that the Department adopt the amendments to N.J.A.C. 7:14A-1.8 as proposed. Leroy Cattaneo, Deputy Director and James Mumman, Deputy Director, Division of Water Resources and John S. Keith, Assitant Commissioner, Environmental Management and Control have reviewed the hearing officer's report and concur with the recommendations. The Department accepts the recomendation to adopt the amendments to N.J.A.C. 7:14A-1.8 as proposed.

Ms. Hammond also recommended that the Department increase the minimum fees in N.J.A.C. 7:14A-1.8(h) and provide for an annual adjustment for minimum fees. However, after consulting with attorneys in the Division of Law and Public Safety, she concluded that the Department could not change the minimum fee schedule upon adoption. The Department expects to propose additional amendments to change the minimum fee within the next 12 months.

Ms. Hammond's recommendations are set forth in more detail in the hearing officer's report. A copy of the administrative record on the proposal, which includes the hearing officer's report, is available upon payment of the Department's normal charges for copying. Persons requesting copies should contact:

Samuel A. Wolfe, Esq.
Department of Environmental Protection
Office of Legal Affairs
401 East State Street
CN 402
Trenton, New Jersey 08625

Summary of Public Comments and Agency Response:

Several commenters as set forth herein suggested substantial changes to the rule. The suggested changes concerned the minimum fee schedule and the risk factors. These changes are so substantial that the Department could not include these changes in the adoption without additional public notice and an opportunity for the public to comment. The Department plans to address these issues in a future rule proposal within the next 12 months. The Department will consider comments submitted on this rule in that future rule proposal.

The Department has provided responses to the comments received which pertain to the Department's proposed amendments to N.J.A.C.

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7:14A-1.8 below. The responses to the comments which relate to the 1990-91 Annual Fee Report, the proposed budget, actual expenditures, and existing fee assessment methodology are provided in the Public Notice section of this issue of New Jersey Register.

COMMENT: The Department assumes the amendments in the proposal will "better distribute the costs among NJPDES permittees." The Department has not provided an economic analysis of the proposal. The proposal redistributes costs to industries which have proportionally greater environmental impact. However, requiring these facilities to pay increased fees may result in an increased financial burden which may result in a detrimental economic impact. The Department should evaluate the number of companies that will go out of business or will choose not to invest further in New Jersey before this proposal goes into effect.

RESPONSE: The Department provided an Economic Impact Statement with the proposed rule on Decemeber 17, 1990. The impact of the fee schedule was discussed. The provision to phase out the cube root factor by the 1990-91 billing should result in lower fee assessments for small and/or efficient dischargers. The industries that contribute significant pollutant loadings will no longer benefit from the cube root factor which effectively increased fees for smaller permittees. This change will result in all facilities being assessed a proportional share of the NJPDES program costs based on their overall impact to the environment. The Department's proposal should not, by itself, cause a facility in compliance with its NJPDES permit requirements to go out of business. The Department has no ability to forecast the future or predict the actions of the marketplace.

COMMENT: The proposed fee formula clearly violates the Department's statutory mandate to "establish and charge reasonable annual administrative fees" for the NJPDES program.

RESPONSE: The Department's proposed fee schedule distributes the budgeted costs associated with the NJPDES permit program based upon the environmental impact of the discharge. This methodology is consistent with the decisions of the New Jersey Superior Court, Appellate Division in *Public Service Electric & Gas v. Dep't of Environmental Protection*, 193 N.J. Super. 676 (App. Div. 1984), aff'd 101 N.J. 95 (1985) and *GAF Corp. v. New Jersey Dep't of Environmental Protection*, 214 N.J. Super. 446 (App. Div. 1986). In these cases, the Appellate Division held that a schedule which graduates fees in proportion to the deleterious impact of the permittee's discharge is reasonable within the meaning of the Water Pollution Control Act, N.J.S.A. 58:10A-9.

COMMENT: The Department stated in its Economic Impact that facilities entitled to limit their fee to the 10 percent maximum fee contribute over 60 percent of the environmental impact. These facilities would benefit directly since the cost to run the NJPDES program with respect to their environmental impact would be shared by the remaining facilities that do not contribute as much to the total environmental impact. The remaining facilities will share the loads attributable to larger polluters. The commenter stated it is more important and equitable to focus attention on establishing a formula that relates on a fair basis the cost of the program to the pollutant cost for each facility.

RESPONSE: The Department is authorized in the Water Pollution Control Act at N.J.S.A. 58:10A-9 to assess reasonable annual permit fees to cover the cost of administering the NJPDES program. In the past, the Department utilized the cube root and square root functions in the environmental impact calculation, to prevent any one facility from paying a disproportionate share of the NJPDES program costs. While the fee schedule was reasonable, these factors did not provide for a linear distribution of NJPDES program costs based on environmental impact. Small and/or efficient dischargers were assessed higher permit fees while larger dischargers benefited with lower fee assessments. The rule essentially provided a volume discount. The Department recognized this inequity in 1987 and proposed to phase out the cube root/square root factor by the 1990-91 billing. The Department also recognizes that NJPDES regulated facilities are designed for a variety of flow requirements. To ensure that NJPDES permit fees are reasonable, the Department established a maximum fee of 10 percent of the budget for each category of discharge in N.J.A.C. 7:14A-1.8(a)10. This methodology distributes NJPDES program costs based on a linear environmental impact distribution. Under the rule as adopted, most facilities will receive lower fee assessments while those with significant environmental impact will be paying a more appropriate share. The Department has removed the volume discount from the rule.

COMMENT: Large fines may achieve compliance and a cleaner environment, but these actions in the long term could possibly create social problems through business closings and unemployed workers in New Jersey. If a publicly owned treatment works (POTW) is able to effectively handle its industry's pollutants to the Department's satisfaction, then a revision of the industry's permit requirements might be justified.

RESPONSE: The Department is currently preparing rule amendments which will turn over the responsibility of regulating industrial dischargers to those POTW's which have a delegated industrial pretreatment program. Once the responsibility for regulating industrial discharges has been delegated to a POTW, the Department will terminate those NJPDES/SIU permits issued to industrial dischargers served by the POTW, where appropriate.

COMMENT: The Department should consider the facility's compliance history in the fee assessment methodology.

RESPONSE: The fee assessment methodology distributes the costs associated with the NJPDES program based upon environmental impact. For surface water discharges, environmental impact is based upon the actual quantity of pollutants discharged. A non-complying facility will be assessed a higher permit fee than a similar discharger that is in compliance with its NJPDES permit requirements. Facilities which violate their NJPDES permit are subject to enforcement action.

N.J.A.C. 7:14A-1.8(a) General Conditions and Applicability of NJPDES Fees

COMMENT: The FY 91 fee assessment is based on our discharge monitoring reports from 1989. During this time period, we had a problem, and the SIU discharge to our plant, which caused our high loadings, was terminated. The SIU discharger paid a penalty to the Department. Now we are being penalized by having to pay a fee based on the pollutant loadings which occurred during this period.

RESPONSE: In accordance with N.J.A.C. 7:14A-1.8(a)7, the Department uses reported pollutant loadings from the most recent 12 month period for which self-monitoring reports are available to calculate environmental impact. For the 1990-91 fee schedule, the Department used reported data from the period January 1, 1989 through December 31, 1989. Improvements in the effluent quality which result in lower pollutant loadings will be reflected in future fee assessments.

COMMENT: In N.J.A.C. 7:14A-1.8(a)3ii, the Department added the following: "The permittee may request a fee recalculation as provided at (a)8 below, after the first monitoring report has been completed." It is likely that the Department meant to reference (a)6.

RESPONSE: The commenter is correct. The reference should be to N.J.A.C. 7:14A-1.8(a)6, not N.J.A.C. 7:14A-1.8(a)8.

COMMENT: The Department has changed the formula in N.J.A.C. 7:14A-1.8(a)9iii, used to determine the rate factor. The Department should provide a breakdown of the rate calculation and the appropriate references for each discharge category so that the permittee can verify these factors.

RESPONSE: The factors which are needed to calculate the rate for each discharge category are: the budget, the total amount of minimum fees to be paid, and the total environmental impact. This information is available in the 1990-91 Annual Fee Report. The Department will provide a listing of the factors used to establish the proposed rates in future Annual Fee Reports in a separate appendix.

COMMENT: In N.J.A.C. 7:14A-1.8(a)10, the Department has removed references to the square root function. This change will significantly increase individual environmental impacts used to assess fees. It can be inferred that the Department expected to require the collection of additional fees for the fiscal year 1990-91. By removing the square root function, it is easy to see how the total pollutant load, and consequently the environmental impact, can be increased significantly. Ignoring other regulatory changes for now, it is likely that by simply removing the square root function, the Department would increase its 1990-91 budget by $4.6 million.

RESPONSE: The commenter is partly correct. The elimination of the square root function does result is significantly larger environmental impacts. However, this increase in environmental impacts will not generate increased revenue for the Department. Individual fees are determined using a rate which is calculated annually, by dividing the adjusted budget by the total environmental impact for the discharge category. The rate used in the 1990-91 fee schedule will be less than the rate for 1989-90.

COMMENT: One commenter suggested that the Department include a fourth definition in N.J.A.C. 7:14A-1.8(a)9iii, known as the "residual budget."

RESPONSE: In the formula provided in N.J.A.C. 7:14A-1.8(a)9, rate is determined by the equation: (budget - sum of minimum fees). The rule defines the terms "budget" and the "Sum of Minimum Fees." While the

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result of this calculation is the "residual budget" or "adjusted budget," the Department does not agree that this calculated term must be defined in the rule since the term does not appear in the rate calculation.

COMMENT: One commenter suggested that the Department better define how the maximum fee of 10 percent of budget for the category is calculated.

RESPONSE: The Department has proposed a maximum fee of 10 percent of the category budget to ensure that no one facility is assessed a disproportionate share of the NJPDES program costs and to maintain the distribution of NJPDES program costs based upon environmental impact. The Department calculates environmental impact for all permittees based upon the formulas presented in N.J.A.C. 7:14A-1.8(c) through (g). In accordance with N.J.A.C. 7:14A-1.8(a)9, the Department determines a rate for each discharge category and calculates the fee schedule. The rate is used to distribute the program costs which will not be covered by the minimum fees. If this calculation results in any fees in excess of the 10 percent maximum, these facilities are assigned the maximum fee. The Department then recalculates the rate with a revised budget to reflect the amount which will be paid by those permittees set at the maximum fee, the revised total environmental impact of the remaining facilities and reruns the fee schedule. It should be noted, that both the budget and the total environmental impact factors used to determine the rate must be adjusted to reflect a maximum fee assessment. For example, assuming a category budget of $1 million to be distributed to 20 facilities, the maximum fee is $100,000. The $1 million budget is reduced by the one permittee at maximum less the sum of the remaining 19 minimum fees ($1M - $100,000 - $9,500 = $890,500). The amount to be distributed to the remaining 19 facilities based upon environmental impact is $890,500.

COMMENT: One commenter stated that the budget cap of 10 percent is a very positive change. However, it should be based on that part of the budget not collected through minimum fees.

RESPONSE: In N.J.A.C. 7:14A-1.8(a)10, the Department has established a maximum permit fee of 10 percent of the budget category. This maximum fee is assessed if a facility's calculated permit fee exceeds 10 percent of the category budget. The Department does not agree with the commentor's suggestion to base the 10 percent maximum fee on the adjusted or residual budget. This suggestion would result in lower fees for those facilities which are assessed the maximum fees because a relatively small percent of the budget is recovered through minimum fees.

COMMENT: The Department should consider capping the Discharge to Surface Water fees at a percentage lower than 10 percent, because the Discharge to Surface Water budget is so large.

RESPONSE: The Department established the 10 percent maximum permit fee to maintain the distribution of NJPDES program costs based on environmental impact, while concurrently decreasing the proportional share of NJPDES costs paid by permitted facilities with small and/or efficient discharges. A percentage less than 10 percent would increase the fees assessed to very small dischargers.

COMMENT: The proposed formula automatically imposes the maximum 10 percent fee upon certain permit holders because they operate primary treatment plants. This assessment disregards the environmental calculation for municipal dischargers and arbitrarily discriminates against municipalities and authorities which owned primary treatment plants.

RESPONSE: The fee schedule does not automatically assess the maximum fee to a primary treatment plant. Permit fees reflect the environmental impact of the discharge, which is based upon the quantity of pollutants discharged, the risk associated with the pollutants, the overall toxicity of the discharge and the impact on the receiving water. These primary treatment plants may discharge relatively low flow, but the overall environmental impact which the fee assessment is based upon is significant as compared to other municipal dischargers.

COMMENT: While the cap of 10 percent will prevent any one facility from bearing an extremely large financial burden, several facilities are faced with fees that are high enough to be detrimental to this fee program.

RESPONSE: NJPDES permittees are required to pay the assessed NJPDES fee. Failure to pay the fee assessed by the Department is a violation of the Water Pollution Control Act and subject to administrative penalties in accordance with N.J.A.C. 7:14-8.

COMMENT: The Department calculated the total weighted pollutant load using reported discharge data from calendar year 1989. During the construction and conversion process to upgrade our treatment plant did not treat our wastewater as well as in 1988. As a result of these treatment plant improvements, the average pollutant loadings for 1989 were higher than in 1988. The Department should not utilize this data in this case because it unjustly penalizes the permittee for complying with the Department's directive to upgrade.

RESPONSE: As stated above, the Department uses reported pollutant loadings from the most recent 12 month period for which self-monitoring reports are available to calculate environmental impact. For the 1990-91 fee schedule, the Department used reported data from the period January 1, 1989 through December 31, 1989. From year to year, effluent quantity and quality changes. During the construction and conversion process, the discharge of pollutants did occur. In the long run, the plant upgrade will result in the discharge of a higher quality effluent. These lower pollutant loadings will be reflected in future fee assessments.

COMMENT: There is no opportunity for a permittee to challenge the budget data generated by the Department. Will a permittee be able to challenge the Department's budget data in the context of challenging its individual fee assessment? If another permittee successfully challenges the budget data, will all other permittees' fees be readjusted accordingly? This would be extremely difficult system to manage. In addition, the proposed rule does not indicate whether permittees will have an opportunity to review the Department's annual projected budgets and past budget data prior to permit fee assessment.

RESPONSE: The NJPDES rule at N.J.A.C. 7:14A-1.8(b) requires the Department to prepare an Annual Fee Report and provide copies to NJPDES permittees prior to conducting a public hearing on the proposed budget and the resulting fee schedule. The appropriate time to challenge the NJPDES budget and program expenditures is during the public comment period on the Annual Fee Report and Fee Schedule. Commenters have, in the past, challenged componenets of the NJPDES budget. In response to public comment, the Department has revised the budget prior to assessing the annual fees. Also, the Department must provide a credit to NJPDES permittees if the cost of administering the NJPDES permit is less than the amount received as permit fees. The recalculation process provided at N.J.A.C. 7:14A-1.8(a)6 is the mechanism available for permittees to correct errors in reported data used to calculate the environmental impact, not to challenge the proposed budget or expenditures.

COMMENT: The Department should institute a variance procedure to allow permittees to appeal assessed fees if the assessment is greatly disproportional to the actual cost incurred by the Department to administer the individual permit. This type of procedure should only be available to facilities whose fees increase by at least 100 percent from the previous year.

RESPONSE: The Department does not agree with this commenter's suggestion. Fees are based upon environmental impact rather than the actual cost incurred to administer the individual permit. Under the rule, environmental impact is adjusted annually based on the conditions at the facility. Therefore, significant fee increases are possible under the existing rule. Where the quantity and/or quality of wastewater discharged changes or a ground water permittee conducting detection monitoring detects ground water pollution the environmental impact increases. The Department already provides permittees two opportunities to challenge the factor/data used to determine environmental impact before the permittee is required to pay the fee assessment. The first process is the pre-billing opportunity before the Annual Fee Report and fee schedule is published. The second is the recalculation procedure at N.J.A.C. 7:14A-1.8(a)6.

COMMENT: In the current rule proposal there is no provision for the Department's personnel to exercise regulatory flexibility when evaluating site specific conditions that merit special consideration on either a technical or economic basis.

RESPONSE: The existing rule provides sufficient flexibility to evaluate site specific conditions used to determine environmental impact and the associated permit fee. Factors used to calculate NJPDES permit fees pursuant to N.J.A.C. 7:14A-1.8 are established in the permitting process. The Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. requires that State agencies, including the Department of Environmental Protection, adopt rules as a means of formulating policy. Rulemaking proceedings put all affected parties on notice of impending changes in agency policy, while also providing ample opportunity to be heard before that policy is ultimately adopted. Without rules, the Department would be acting in a quasi-judicial capacity, subjecting all decisions to court review. The rule ensures that the Department treat all facilities fairly.

COMMENT: The NJPDES fee rules should clearly define the method for appealing the parameters used in the fee assessment process.

RESPONSE: Factors and parameters which will affect the fee assessment are established in the permitting process. A permittee may request a permit modification at any time to request changes in permit

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requirements. The recalculation process in N.J.A.C. 7:14A-1.8(a)6 requires the permittee to submit any and all information, including plot plans, maps, laboratory data and revised monitoring reports, needed to justify an adjustment to the factors used to determine environmental impact within 30 days of the initial billing. However, the Department is not required to recalculate a permit fee using new information if the permittee was required but did not submit the information earlier. If the submitted documentation indicates that the Department has made an error in the original fee assessment, the Department will issue a corrected invoice for the adjusted amount.

COMMENT: The Department acknowledges the inequity of the fee system by limiting the fee assessed to any permittee to 10 percent of the program costs. If the equation was equitable, this would not be necessary. Also this limitation appears to have been established to significantly reduce the fee of one permittee, Passaic Valley Sewerage Commission (PVSC). All other dischargers paying the maximum save a few thousand dollars while PVSC saves over $400,000. If there was a serious attempt to limit the maximum charges, there would be more permittees included.

RESPONSE: The Department has proposed a maximum fee equal to 10 percent at N.J.A.C. 7:14A-1.8(a)9 to ensure that fees continue to be based on environmental impact. The Biochemical Oxygen Demand (BOD) loading for a municipal treatment plant is a significant factor in the environmental impact calculation. Equally important, is the overall risk of the discharge as measured by the bioassay tests and stream rating factors. The BOD loading for municipal plants ranged from zero to a maximum of 12,425 kilograms per day (kg/d) from PVSC and averages 283.5 kg/d. The environmental impacts for those facilities assessed the maximum fee of 10 percent ranged from 2,008,587 to 11,734,410, while the "average" municipal discharger has an environmental impact of 63,755. Clearly, the maximum fee is assessed to those dischargers which exhibit significantly greater environmental impact.

COMMENT: The NJPDES budget has increased dramatically in the past several years. Facilities which are assessed only the minimum fee are paying a decreasing portion of the NJPDES budget. Those facilities with a fee based on environmental impact will continue to pay for a greater share of the NJPDES program even with the maximum fee cap.

RESPONSE: The commenter is correct. The minimum fee for surface water dischargers has not increased since 1985. The minimum fees for ground water dischargers have increased to a maximum minimum fee of $5,000 where ground water contamination has been detected and corrective measures have not been initiated by the permittee. These amendments will increase the minimum fee for ground water permittees which are considered hazardous waste facilities or industrial waste management facilities, to $40,000. The Department will be evaluating the cost associated with NJPDES permitting and proposing increases to the minimum fees for all discharge categories in the future.

COMMENT: In N.J.A.C. 7:14A-1.8(a)9, the Department defines rate using the equation: Rate = (Budget – Sum of Minimum Fees)/Total Environmental Impact. It is unclear whether this methodology is similar to that used last year, as the 1990 proposal does not fully define the rate equation. The rate factor of 78.43305 for FY90 does not compare with the FY91 rate of .87554.

RESPONSE: The Department is using the same methodology to calculate the rate used to assess permit fees. The Department believes that the new language is much simpler to understand. Rate is the cost for each unit of environmental impact. This cost is dependent upon the amount of fees required to fund the NJPDES program, the total environmental impact and the amount to be generated by the minimum fees. Rate is inversely proportional to the environmental impact values. As the environmental impacts increase and rates used to assess fees will decrease. For this reason, the rate for industrial surface water dischargers was 78.43305 for FY90 and 0.87554 for FY91.

COMMENT: The commenter stated that a discharger's fee should relate in some measure to the costs incurred by the Department in administering their NJPDES permit.

RESPONSE: The New Jersey Superior Court, Appellate Division determined in *Public Service Electric & Gas v. Dep't of Environmental Protection*, 193 N.J. Super. 676 (App. Div. 1984), aff'd 101 N.J. 95 (1985) and *GAF Corp. v. New Jersey Dep't of Environmental Protection*, 214 N.J. Super. 446 (App. Div. 1986), that the Department can allocate NJPDES program costs among the individual permittees in any reasonable manner similar to the current methodology which distributes costs based on environmental impact. The fee assessment methodology includes a minimum fee assessment for all dischargers which represents a minimum cost of administrative services incurred by the Department.

COMMENT: A commenter stated that the elimination of the cube root and square root at N.J.A.C. 7:14A-1.8(a)10 has resulted in an inequitable distribution of unreasonably high permit fees to disproportionately few facilities in the State. We do not believe that it was the Department's intention to exponentially increase the toxicity factors from their cube root to the square root then to linear values. The actual risk for discharging a particular pollutant does not and should not change from year to year.

RESPONSE: The Department originally used the cube root factor to compress total weighted pollutant loadings used to calculate surface water permit fees. This amendment does not alter the risk factors established in Table II. Under the old rule, facilities with the greatest environmental impact were assessed a smaller share of the NJPDES program costs at the expense of small and/or efficient dischargers. In 1987, the Department proposed to phase out the cube root factor and to assess fees on a linear scale beginning July 1, 1990. The amended rule will result in increased environmental impact for all dischargers. The Department will distribute NJPDES program costs based on this revised environmental impact. Now, one unit of pollutant load is the same cost for a large or small discharge.

COMMENT: The Department should exclude non-contact cooling water from the total weighted load. These outfalls discharge large volumes of river water that are used for cooling purposes only. Measurements of pollutants at the detection level can as a result of normal analytical variability produce a false positive reading.

RESPONSE: The Department does not agree that non-contact cooling water outfalls should be exempt from the NJPDES fee calculation. Although, the pollutant of ultimate concern in a non-contact cooling water discharge is generally heat, other limited pollutants may be present in the discharge at low concentrations. The Department in the NJPDES permitting process develops net limitations as provided at N.J.A.C. 7:14A-3.14(h). A pollutant has no impact on the fee assessment if the net pollutant loading is negative or zero. In accordance with N.J.A.C. 7:14A-1.2(c), "no person shall discharge any pollutant except in conformity with a valid NJPDES permit." The fee for a non-contact cooling water discharge is based upon the total weighted load of limited pollutants discharged. Limits are established where the presence of the pollutant is suspected. The discharge of any pollutant at low concentrations and high flow may have a significant impact on the receiving stream. The Department acknowledges that pollutants reported at or below the method detection limit can not accurately be measured. For fee assessment purposes, the Department uses one-half the reported method detection limit to calculate the pollutant load.

N.J.A.C. 7:14A-1.8(c) The Annual Fee for Surface Water Discharges

COMMENT: The Department has changed the language in N.J.A.C. 7:14A-1.8(c)1i, used to calculate the total weighted pollutant loading and total weighted concentrations for volatile organics compounds, base neutral organic compounds, acid extractable organic compounds, pesticides and PCBs. The commenter stated that a major problem exists in the fee regulations with respect to the utilization of data in the environmental impact calculation. The proposed amendments bear no reference to the utilization of parameters that are not detected (ND) or below the method detection limit (MDL) or to be more technically correct, below the laboratory's practical quantification limit (PQL).

RESPONSE: At the present time the Department regards the practical quantification limit (PQL) as the MDL. The Department has explained how pollutant concentration reported at or below the method detection limit should be used to calculate the total weighted pollutant load and the total weighted concentrations. The Department uses one-half the reported method detection limit for parameters that are reported at or below the method detection limit (MDL). Furthermore, volatile organic compounds, base neutral organic compounds, acid extractable organic compounds, pesticides, and PCBs which are reported at or below the MDL in all samples for the monitoring period will be deleted from the total weighted concentration and the total weighted load.

COMMENT: One commenter stated that it is unclear how to calculate the total weighted load which is the sum of all limited pollutants in kilograms per day (kg/d).

RESPONSE: To calculate the total weighted pollutant load in N.J.A.C. 7:14A-1.8(c)1i, the Department first determines which pollutants are limited in the individual NJPDES permit. If a limit exists on the maximum or average concentration or loading, then the actual quantity of that pollutant discharge is calculated for each reporting period. The pollutant loading is the concentration in milligrams per liter (mg/l)

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multiplied by flow in millions of gallons per day (mgd) multiplied by the liters per gallon or 3.785.

Example: 10 mg/l × .05 mgd × 3.785 = 1.8925 kg/d

Each pollutant loading is multiplied by the associated risk factor and summed together to obtain the total weighted pollutant load, or sum of all limited pollutants.

COMMENT: One commenter stated that the method of using one-half the detection limit to calculate the total weighted pollutant load in N.J.A.C. 7:14A-1.8(c)1i2 is actually unscientific. The use of a detection limit in any calculation is for statistical purposes. It provides some way of utilizing the data. The commenter recommended that a better method would be to utilize one-half the detection limit of more than one half of the samples analyzed during the monitoring period actually were detected above the detection limit.

RESPONSE: A pollutant that is present but at some unknown value below the method detection level (MDL) is assumed for fee assessment purposes to be present at a concentration equal to one-half the MDL. Since the pollutant is definitely present, the Department is justified in considering this pollutant in the environmental impact calculation. Assuming the pollutant concentrations below the MDL follow a normal distribution, the average is one-half the MDL.

COMMENT: The Department has proposed to use one-half the detection limit to calculate the total weighted pollutant load when one or more samples during the monitoring period were present in concentrations above the detection limit. Since there is little validity in the quantification of these compounds at levels below the analytical detection limit, the commenter suggested that the Department use a "zero" rather than one-half the detection limit. This would avoid situations where inflated laboratory detection limits, due to interference of other analytical problems would contribute to increases in the total weighted pollutant loading.

RESPONSE: As explained in the immediately preceding response, one-half the method detection limit is a more appropriate value for pollutant concentrations reported at or below the method detection limit rather than the assumption of "zero." The Department is currently evaluating quantification levels that all laboratories should be able to achieve. Permittees that are concerned that methods used by their laboratory are causing increases in fees should require more sensitive methods to be used by the laboratory.

COMMENT: The Department does not properly account for the practical significance of computed detection limitations. In practice, laboratories sometimes report concentrations above detection limits even in field blanks and trip blanks. Thus, a certain proportion of samples is expected to "detect" substances even when they are not in fact present. Also, recent statistical work has shown that true detection limitations are often several times those reported by laboratories, because the statistical assumptions used by the laboratories are not valid. This should cause regulators to doubt sporadic concentrations beneath three to five times the reported detection limits. It is recommended that the Department adopt a more realistic criterion for the true absence of a sample parameter.

RESPONSE: It is the permittee's responsibility to ensure that the monitoring data reported to the Department on Discharge Monitoring Reports (DMR's) is true, accurate and complete. The Department plans to propose a rule which will provide practical quantification limits (PQL) for all pollutants with criteria in the Water Quality Standards at N.J.A.C. 7:9-4. The Department is also developing policies for reporting pollutants present at low levels that will address variability in laboratories and methods.

COMMENT: The Department has proposed to use one-half the method detection limit (MDL) to calculate the total weighted pollutant load and the total weighted concentration for values reported as less than the MDL when some of the samples have been detected above the MDL. The MDL can vary greatly depending upon the analytical method used, and within that method the dilution needed to analyze the pollutant. The same analytical method can, under different circumstances, produce a range of MDLs that can vary by one or two orders of magnitude. A facility with higher MDLs in some samples will be penalized for an analytical fact over which the facility had virtually no control. The occurrence of varying MDLs makes the use in a fee calculation system inequitable.

RESPONSE: The practical quantification limits (PQL) will be proposed by the Department within the next six months for all pollutants with criteria in the Water Quality Standards. This proposal should resolve these types of reporting problems. The Department has adopted the provision to delete violatile organic compounds, acid extractable organic compounds, base-neutral organic compounds, pesticides, and PCB's (see N.J.A.C. 7:14A Appendix B—Table II), if all values at a monitoring location during the monitoring period are at or below the minimum detection level.

COMMENT: Fee calculations based on total effluent loadings to not account for pollutants that may be present in the influent water source. Where this is city water, the effect may be insignificant. Private wells or surface waters may be a different matter.

RESPONSE: The Department will utilize the reported net loading if a net limit has been established in the NJPDES permit. As stated in N.J.A.C. 7:14A-1.8(c)1i, a negative pollutant loading will be considered a zero in the calculation of the total weighted pollutant loading. The removal of one pollutant such as total suspended solids (TSS) does not reduce the environmental impact of other more toxic pollutants in the environmental impact calculation.

COMMENT: The commenter disagreed with the Department's proposal to use zero for the pollutant load if the permit includes a net limitation. The commenter stated that dischargers should be able to report negative values on its Discharge Monitoring Reports. The Department's decision to eliminate the use of negative values from each submitted Discharge Monitoring Report will bias the final annual average.

RESPONSE: The Department did not change the reporting requirements for NJPDES permittees. The proposal to use a zero for net pollutant loadings reported as a negative value in N.J.A.C. 7:14A-1.8(c)1i does not alter the reporting requirements for the permittee. The permittee should continue to report on his monthly Discharge Monitoring Reports (DMRs) a negative net value. This proposal will only eliminate a loophole for permittees with net limitations which reduced the overall environmental impact for a discharger. A permittee should not offset the discharge of other pollutants by removing a single pollutant such as total suspended solids from its wastestream. The Department will replace a pollutant load that is reported by the permittee as a negative value (or no pollutant discharges) with a zero load for that pollutant. The removal of a pollutant with net limits does not decrease the impact of other pollutants in the discharge.

COMMENT: The Department should define the pollutants which will be deleted from the total pollutant load in N.J.A.C. 7:14A-1.8(c)1i(2) and N.J.A.C. 7:14A-1.8(g)1i(1) and the total weighted concentration in N.J.A.C. 7:14A-1.8(d)2ii(1) if reported as non-detected in all samples for the monitoring period.

RESPONSE: In N.J.A.C. 7:14A-1.8(c)1, (d)2 and (g)1, the Department proposed to delete volatile organic compounds, base neutral organic compounds, acid extractable organic compounds, pesticides, and PCBs. Most of these compounds are listed in Appendix B—Table II of the NJPDES rules.

COMMENT: If a net permit limit is established and all of the reported results after substraction from the influent are either zero or negative, does the one-half the detection limit apply?

RESPONSE: The permittee should report the actual net value on his DMRs. If a net limit exists and the average loading is negative, the pollutant loading used in the calculation of the total weighted concentration is zero. If the influent concentration and the effluent concentration are both less than the minimum detection limit, than the permittee should report a zero loading. If the influent concentration is less than the detection limit and the effluent concentration is greater than the detection limit, the net concentration is the reported difference and this concentration is used to determine the pollutant loading (effluent = 10 mg/l and influent = > 5 mg/l).

COMMENT: The Department will be modifying many permits as a result of Section 304(1) of the Federal Clean Water Act, 33 U.S.C. 1314 to incorporate monitoring requirements for priority pollutants. The commenter assumed these pollutants if detected would not be included in the fee calculation.

RESPONSE: The commenter is correct. Environmental impact for all surface water dischargers is based on the loading in kilograms per day of all "limited" pollutants multiplied by their associated risk factors. The concentrations of priority pollutants listed in the NJPDES permit as "monitor only" will not be used in the fee assessment process until the Department establishes permit limits for those pollutants.

COMMENT: Laboratory contamination or sample contamination by compounds such as methylene chloride and bis-2(ethylhexyl) phthlate commonly lead to false positive detections. An exemption for these compounds should be included in the rule. It is suggested that if the permittee can supply adequate laboratory Quality Assurance/Quality Control (QA/QC) back-up proving that the individual sample was a false positive, that the sample result be deleted from the calculation.

RESPONSE: It is the permittee's responsibility to ensure that the monitoring data reported to the Department on Discharge Monitoring

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Reports and/or Well Monitoring Reports is true, accurate and complete. It is not the Department's intention to use reported data which may be a result of laboratory or sample contamination. The permittee should submit revised monitoring data if laboratory QA/QC data indicates that the individual sample was a false positive.

COMMENT: A commenter stated that the bioassay factor is inappropriate for determining the pollutant loading. It is impossible for a primary sewage treatment plant to pass a bioassay test because it only removes settleable material and does not "treat" the waste stream.

RESPONSE: The bioassay factor is not used to determine the total weighted pollutant loading. Rather, the bioassay factor in conjunction with the stream rating factor is used to determine the overall environmental effect/impact of the discharge. Those discharges with high bioassay factors present a greater risk to the environment. The Department assesses a higher fee to a discharge that is considered toxic based on the bioassay test, than a non-toxic discharge with the same pollutant loads. Clearly, the more toxic discharge has a greater environmental impact

N.J.A.C. 7:14A-1.8(d) Annual Fees for Ground Water Discharges

COMMENT: In N.J.A.C. 7:14A-1.8(d)1iii(4), the Department proposed to assign a permeability rating of 10 to a facility in corrective action which has demonstrated control of the plume. The commenter stated that this provision should provide some incentive to ground water dischargers to delineate previously undelineated plumes and to move faster to delineate and implement remedial action.

RESPONSE: The Department has assigned a permeability rating of 10 to a facility in corrective action that has demonstrated control of the plume of contaminated ground water. Only facilities conducting corrective action benefit as the demonstration of plume control is based on the actual ground water remediation program. Other provisions of this rule provide better incentives for permittees to delineate the extent of ground water pollution and/or initiate ground water remediation.

COMMENT: Some consideration must be given to the liner quality, since, as of now, the geologic unit below the liner system would have the same rating as the geologic unit below a discharge system without a liner.

RESPONSE: The Department does consider the permeability of the liner material where a liner is present in determining the environmental impact of an active ground water discharge in N.J.A.C. 7:14A-1.8(d)1. Where ground water contamination has been detected below a lined regulated unit, the permeability of the lined unit is not considered by the Department. In these situations, the Department uses the premeability of the geologic unit that has been contaminated in the fee assessment process. Obviously, the presence of a liner has not prevented a leak and the appropriate permeability rating is the factor assigned to the geologic unit.

COMMENT: In N.J.A.C. 7:14A-1.8(d)2ii(1), the Department stated that the Department would delete certain pollutants from the "total weighted load" when calculating ground water environmental impact. The Department should have stated "total weighted concentration."

RESPONSE: The Department has deleted the word "load" and replaced it with "concentration". The Department has changed the language in N.J.A.C. 7:14A-1.8(d)2ii(1) to read: "Volatile organic compounds, acid extractable compounds, base-neutral oraganic compounds, pesticides, and PCB's will be deleted from the Total Weighted Concentration, if reported as non-detectable in all samples for the monitoring period."

COMMENT: The Department does not explain how to calculate the total weighted concentration for various priority pollutant metals and conventional pollutants which are not detected.

RESPONSE: The total weighted concentration in N.J.A.C. 7:14A-1.8(d)2 is based on pollutants with limits or standards in the individual NJPDES ground water permit. The deletion of undected volatile organic compounds, acid extractable compounds, base neutral organic compounds, pesticides, and PCB's pollutants listed in Appendix B—Table II has been proposed because the GC/MS analytical procedure analyzes a variety of priority pollutants and reports detectable concentrations as well as the minimum detection limit. The Department has established limits and/or standards where the occurrence of a metal or conventional pollutant is suspected. Therefore, for all pollutants not listed in Appendix B—Table II, the average concentration is calculated using one-half the minimum detection limit when the concentration is reported as below the detection limit.

COMMENT: The Department is assigning a permeability rating of 10 to facilities that have demonstrated control of the plume of ground water contamination. The commenter suggested that the Department assign a permeability rating of zero.

RESPONSE: The permeability rating factor is one of the components of the Ground Water Rating Factor. The intent of the Ground Water Rating Factor is to evaluate the overall impact of a discharge to ground water. The Department believes that assigning a permeability factor of 10, the lowest permeability factor in N.J.A.C. 7:14A-1.8(d)1iii(4), recognizes the reduced environmental threat as a result of mitigating the potential for off-site migration. The commenter's suggestion to assign a permeability rating of zero under these circumstances would not be appropriate as this factor would signfiicantly reduce the overall environmental impact of the discharge.

COMMENT: One commenter suggested that the Department extend the range of permeability rating factors from the existing 10 to 22 to a new scale ranging from 20 to 44.

RESPONSE: As stated above, permeability is only one of the components evaluated in the Ground Water Rating Factor. The Department believes that a balance between potential use, existing use, monitoring status and permeability is critical in the overall fee assessment process. Doubling the range for this factor would disproportionately increase the significance of permeability in the overall environmental impact calculation.

COMMENT: One commenter suggested that the Department incorporate a pollution control factor in the ground water environmental impact calculation in N.J.A.C. 7:14A-1.8(d)2. The recommended pollution control factor should be based on the annual rate of flow weighted pollutants across the facility boundary.

RESPONSE: The Department believes that the fee assessment methodology presented in N.J.A.C. 7:14A-1.8(d)2 provides an adequate reduction for those facilities that have controlled the off-site migration of ground water pollution. In these situations, the total weighted concentration is calculated using the average pollutant concentrations for all wells and through the assignment of a permeability rating of 10.

COMMENT: One commenter suggested that the Department not base ground water permit fees primarily on the amount and type of contamination detected in the ground water monitoring program. The commenter suggested that the Department could devise a method for assesing fees based on the degree of culpability of the permittee in causing the ground water contamination.

RESPONSE: The Department does not agree that the culpability of a permittee in causing the ground water contamination should be a factor in the fee assessment process. This should remain an enforcement issue.

COMMENT: The Department may require a facility to monitor two or more aquifers in a ground water permit. It is possible to detect a pollutant above the Minimum Detection Limit (MDL) in the upper aquifer, and not to detect the pollutant in the lower aquifer. The same situation could occur between upgradient and downgradient monitor wells. However, the Department's fee methodology would use one-half the MDL for undetected samples from the lower aquifer or from upgradient wells. The Department unfairly assumes that all wells in a ground water monitoring network could be affected and uses the value of one-half the MDL.

RESPONSE: The Department has corrected this oversight in N.J.A.C. 7:14A-1.8(d)2ii(1). Where the plume has been defined, the Department will consider each well as a separate monitoring location. The Department has added: "To calculate the average concentration for a delineated plume, the Department will use zeros for these pollutant concentrations if not detected in a well." The Department agrees that the average pollutant concentration should not be administratively increased because of undetected values in upgradient well locations, or monitoring wells located in a lower aquifer. Ground water permittees without a defined plume are not affected because the Department has selected the well monitoring point with the highest average concentration. This does not change the calculation methodology for total weighted load in N.J.A.C. 7:14A-1.8(c) or (g), since this calculation is already performed at each monitoring point.

COMMENT: The Department uses concentration data to calculate ground water environmental impact in N.J.A.C. 7:14A-1.8(d)2. Some facilities with significant environmental impact are required to report the thickness of Non-Aqueous Phase Liquids (NAPLs) which cannot be used to calculate a total weighted concentration. A significant pollution source may be assessed a very small permit fee. The commenter stated that fees based on reported concentration data are inequitable and unworkable and recommend that the Department omit or reevaluate the proposed rule.

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RESPONSE: The presence of Non-Aqueous Phase Liquids (NAPL's) in the saturated or unsaturated zone often as "floating product" represents an impermissible discharge. NJPDES permit and/or enforcement actions generally require this material be removed to control the "source" of ground water pollution. The concentration of pollutants in the ground water resulting from these sources of ground water pollution and the areal extent of this contamination are appropriate measures for NJPDES ground water permit fee assessments. However, in cases where the "floating product" covers a significant portion of the site, it is difficult to obtain a reasonable measure of pollutants dissolved in ground water. Where the removal of this material takes one or more years to accomplish, absences of monitoring data for dissolved pollutants may result in an inappropriately low fee assessment. The Department agrees with the commenter and will develop a method to address this issue in the individual NJPDES permit. Where applicable, the Department will modify existing NJPDES permits.

COMMENT: The Department has not explained how to calculate the ground water environmental impact at a facility with more than one plume. The commenter recommended that the Department calculate the environmental impact for each plume.

RESPONSE: Where the permittee has demonstrated to the Department the presence of one or more plumes of contaminated ground water, the Department will calculate separate environmental impacts and than calculate a facility environmental impact. This can be accomplished under the existing fee assessment methodology.

COMMENT: Chromium is found in several forms. The risk factor for trivalant chromium is 100 while the risk factor for hexavalent and total chromium is 100,000. In most cases, where the discharge of chromium is limited, the monitoring requirement is for total chromium, only. The Department assumes that any chromium present in the discharge is hexavalent chromium, the most toxic form. The Department should require the permittee to monitor for both total and hexavalent chromium to ensure that the proper environmental impact is calculated.

RESPONSE: The parameter of most concern in the chromium series is hexavalent chromium. This is the most reactive form and was assigned the higher risk factor of 100,000. The same risk factor has also been assigned to total chromium based on the assumption that unknown fraction of hexavalent chromium is present in the discharge. The Department will utilize hexavalent and trivalent chromium pollutant loadings in the fee assessment process if the permittee monitors and reports both total and hexavalent chromium. Permittees may request a minor modification pursuant to N.J.A.C. 7:14A-2.14 to include monitoring requirements for hexavalent and total chromium.

COMMENT: The environmental impact formula in N.J.A.C. 7:14A-1.8(d)2 is extremely sensitive to changes in the total weighted concentration (TWC). We are not aware of any reason why the TWC should have increased from last year.

RESPONSE: On July 6, 1987, the Department adopted its proposal to phase out the cube root factor by July 1, 1990. Implementation of this provision in the 1990-91 billing will result in larger environmental impacts for all NJPDES permittees. The Department acknowledged that use of the cube root factor and the subsequent square root factor, effectively assessed a disproportional share of the NJPDES program to small and/or efficient dischargers. Under the existing rule, the total weighted concentration would have increased in the 1990-91 fee assessment without any other changes occurring at the facility. Therefore, if the total weighted concentration was 10 last year, the value this year would be 100.

COMMENT: A commenter stated that his municipal treatment facility discharges wastewater close to drinking water prior to discharging the effluent to a land treatment process. The impact of this discharge on the environment is extremely small. The Department has stated that the NJPDES permit fee structure was designed to penalize those with outdated treatment facilities and reward those with state of the art treatment. It appears that the fee structure as now proposed fails to reward authorities whose operations cause minimal environmental impact.

RESPONSE: The fee structure categorizes pollutant types and rates the degree of hazard for each in the discharge to ground water environmental impact determination. Sanitary wastewater with secondary treatment or better is assigned the lowest risk factor in N.J.A.C. 7:14A-1.8(d)1i. Other factors considered in environmental impact calculation for municipal discharges are the volume of wastewater discharged and the Ground Water Rating Factor. Municipal ground water dischargers have been assigned a percentage of the muncipal budget. The distribution of this budget is based upon the factors described above. The commenter's facility discharges more wastewater than any other regulated municipal ground water discharger and is therefore assessed a higher fee.

N.J.A.C. 7:14A-1.8(g) Annual Fees for Significant Indirect Users

COMMENT: The environmental impact calculation for Significant Indirect Users (SIU) based on the type of discharge activity rather than the actual environmental impact of the discharge is arbitrary.

RESPONSE: The Department agrees and has adopted a fee assessment methodology to base SIU fees on the quantity of limited pollutants discharged and the risk associated with the pollutant.

COMMENT: It is unfair for the Department to assess SIU fees using the risk factors specified in Table I without considering the effects of the compounds on biological treatment capacities and pass-through potential.

RESPONSE: SIU fees are based on the reported pollutant loadings for parameters limited in the NJPDES permit. The decision to regulate a specific pollutant in the NJPDES permit is based upon the receiving POTW's treatment capabilities, potential for pass-through, and other site-specific criteria. The Department assigned the SIU risk factors in Table I based upon POTW treatment capabilities, potential impacts on sludge quality, surface water quality, air emissions and plant performance.

COMMENT: Compounds such as copper and cyanide which have very low ambient water quality criteria for freshwater and saltwater are assigned a risk factor of 100, while compounds that are relatively nontoxic at much higher concentrations, such as 1,1,1,-trichloroethane, have a much higher risk factor rating of 10,000. The SIU risk factor rating system needs to be based on more rigorous scientific properties.

RESPONSE: The Department considered potential environmental impacts of pollutants discharged from SIUs on the surface water, the ground water, and air quality as well as POTW treatment capabilities. Copper was assigned a SIU risk factor of 100, which is less than the Surface Water risk factor, because an estimated 85 percent of the potential impact was to sludge quality rather than surface waters. Cyanide also received a SIU risk factor less than the risk factor assigned to surface waters because POTW treatment removes the compound from the wastestream. Trichloroethane, is a volatile organic compound and is assigned high risk factors for discharges to the surface and ground waters. The SIU risk factor for trichloroethane is 10,000 because this pollutant is a known ozone depleter.

COMMENT: The underlying technical assumptions for many of the numbers in the fee formula were not made available to the public. "Report of Congress on the Discharge of Hazardous Wastes to Publicly Owned Treatment Works" and "Fate of Priority Pollutants in Publicly Owned Treatment Works—Final Report" are not generally available. The Department should have included these reports in the public record. Without this data, the true basis for some of these calculations cannot be understood. The commenter objects to any tecnical proposal which fails to disclose the exact nature of its technical and scientific assumptions.

RESPONSE: The technical assumptions utilized in the development of SIU risk factors were referenced as part of the public record in the 1990-91 Annual Fee Report. The actual reports are voluminous and were available for public review through the Department's records custodian. These reports are also available from the U.S. Environmental Protection Agency, Region II, Federal Plaza, New York, New York.

COMMENT: A commenter stated that the assignment of risk factors for SIU's are oversimplified. The listed fates of pollutants entering a POTW are generalized and do not take into account differences in treatment plant operations, level of treatment, ultimate method of sludge disposal and various site-specific conditions that would effect the true "environmental risk" of these compounds.

RESPONSE: The SIU risk factors evaluate the potential environmental impact of a pollutant originating from NJPDES permitted SIU. Consistent with Section 510 of the Clean Water Act and 40 CFR Part 403, the regulation of pollutants by POTW's or the Department as incorporated into SIU permits is based upon the individual POTW's capabilities. As such, the environmental risk of these compounds is assessed based upon a given POTW's sludge disposal methods, receiving water, and treament capabilities.

COMMENT: Publication of the SIU risk factors should be subject to considerable scientific peer review and scrutiny prior to incorporation into the NJPDES rule.

RESPONSE: The Department has developed SIU risk factors based upon the best currently available information. The Department and the U.S. Environmental Protection Agency are conducting and proposing research into the development of SIU risk factors. In the future, the Department will reevaluate all risk factors presented in N.J.A.C. 7:14A-1.8—Table II.

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COMMENT: Pollutant loadings in N.J.A.C. 7:14A-1.8(g) are based on average daily loading. Most permittees are only required to report the maximum discharged. The Department should issue a blanket modification to all SIU permittees to require the reporting of monthly averages.

RESPONSE: Permit monitoring requirements are established at the minimum frequency which the Department believes will be sufficient to protect human health and the environment. The permittee may request a minor modification in accordance with N.J.A.C. 7:14A-2.14 to increase the sampling frequency. The Department also provides permittees an opportunity to submit supplemental data such as monthly average concentrations/loadings in the prebilling process.

COMMENT: The Department has assigned the same risk factor for petroleum hydrocarbons and oil and grease. However, using a risk factor of 100 for animal and vegetable fats has a substantial impact on the food processing industry. The Department should establish a risk factor for vegetable and animal fats.

RESPONSE: Oil and grease includes the non-petroleum based pollutants of animal and vegetable origin as well as petroleum based pollutants. Therefore, the same risk factor is used for oil and grease and petroleum hydrocarbons, as the Department can not ascertain the relative percent of oil and grease and petroleum hydrocarbons.

COMMENT: Monitoring is relatively inexpensive. Adding a few more parameters should not substantially increase costs. Such is not the case where these pollutants are added into the permit fee. Only those parameters for which there are sound technical justification should be included in the fee calculation. If temperature is a limited pollutant, there seems little justification for its inclusion in the fee calculation unless limits are exceeded.

RESPONSE: As required by N.J.A.C. 7:14A, the Department must regulate through a NJPDES permit any pollutant present. There is sound justification for imposing discharge limitations and monitoring requirements for any pollutant present in the wastewater discharge. All pollutants in the wastewater impact the environment. If a discharge limit has been established for temperature, then the use in the environmental impact calculation is appropriate.

COMMENT: The proposed fee assessment methodology in N.J.A.C. 7:14A-1.8(g) places new emphasis on permit limits. With little consistency often apparent on limited pollutants between similar dischargers, the proposed methodology will result in inequitable overall assessments. The Department should treat all industries fairly when imposing discharge limits. Publish limits Statewide for both discharges into POTW and into the surface waters.

RESPONSE: The Department calculates fees for Significant Indirect Users (SIU's) in N.J.A.C. 7:14A-1.8(g) based upon the actual quantities of limited pollutants discharged. The Department does apply the same limits to dischargers regulated by the Federal categorical limits. However, where more stringent local limits have been established by the receiving POTW, the Department must utilize the more stringent local limits. All similar industries in a delegated POTW should have the same limits. However, NJPDES permits for landfill leachate and contaminated ground water discharges may establish monitoring requirements and discharge limits based upon the composition of the wastestream. The 1987 amendments to the federal Clean Water Act (33 U.S.C. 1251 et seq.) requires the Department to establish water quality based effluent limitations. This precludes the publication of Statewide limits for discharges to surface water.

COMMENT: One commenter stated that even if the risk factors for SIUs are found to be appropriate, their use to reflect the risk of an indirect discharge into a POTW is improper. POTWs have been established to treat contaminated water. Discharges to a POTW, therefore, are not the same as a discharge to surface water and, since contaminated water is treated at a POTW in accordance with the Clean Water Act and associated regulation, the treatment would by its existence eliminate the risk that would be posed if these waters were discharged directly to surface waters. Further, since a discharger is charged a fee by the POTW on an equitable basis for the pollutant loading, the fee assessed by the Department would in essence be a double charge.

RESPONSE: The degree of treatment and eventual fate of a pollutant varies according to the individual capabilities of the POTWs. POTWs are designed and intended primarily to treat domestic sewage, and the pollutants from industrial facilities often contain constituents that are not normally found in typical domestic waste. That the POTW's treatment system is capable of treating or reducing some industrial pollutants is secondary to the design and operation of that POTW. Further, the treatment provided by a POTW does not guarantee the elimination of risks to the environment or human health. The Department is currently pursuing regulatory revisions which will result in the termination of most NJPDES/SIU permits issued by the Department to facilities discharging to POTWs with an approved pretreatment program. The Department assesses a NJPDES permit fee to cover the Department's cost to administer the SIU permit. The permittee may request a recalculation pursuant to N.J.A.C. 7:14A-1.8(a)6 upon termination of its permit.

COMMENT: Allow the local POTW to regulate the discharges from SIUs, while the Department regulates the discharge from the POTW.

RESPONSE: The Department has delegated the permitting and enforcement responsibility to 22 POTWs pursuant to N.J.A.C. 7:14A-13.1. As stated above, the Department is revising rules that will allow the Department to terminate most NJPDES/SIU permits in those service areas where the POTW has an approved pretreatment program. In non-delegated service areas, the Department is federally mandated to issue NJPDES permits to SIUs.

COMMENT: Our company's SIU discharge is regulated by a designated POTW. Why must our company be a part of and pay into the Department's NJPDES fee program when we are covered by a local permit?

RESPONSE: The Department issued NJPDES permits to SIUs in accordance with N.J.A.C. 7:14A-10.5. Until the NJPDES permit is terminated by the Department, the NJPDES permit remains in full force and effect. The NJPDES permittee is required to pay the NJPDES fee assessment until termination. Upon termination, a permittee may request a recalculation of the fee in accordance with N.J.A.C. 7:14A-1.8(a)6, retroactive to the date of permit expiration.

COMMENT: How did the Department assign a risk factor of 100 to petroleum hydrocarbon without any scientific basis? The only parameter limited in our SIU permit is petroleum hydrocarbons and, with the toxicity factor of 100, it puts our toxic loading well above the 10 percent maximum of the SIU budget.

RESPONSE: The SIU risk for petroleum hydrocarbon was established at 100 based on the potential impact on the POTW's treatment system. This pollutant has a great capacity to intefere with the sewage treatment plant's operation and to result in pass-throughs at the plant.

COMMENT: Unless the laboratory data in the technical reports used to establish the SIU risk factors were analyzed by New Jersey certified laboratories using approved methods, the data in the reports should not be considered in the development of risk factors.

RESPONSE: The laboratory data in the technical reports issued by the U.S. Environmental Protection Agency and used by the Department to establish the SIU risk factors was prepared by federally certified laboratories using the Environmental Protection Agency approved testing methodologies. Whether these laboratories are New Jersey certified is not an issue.

COMMENT: The Department is including charges for air emissions. No statutory or regulatory basis is presented for charging NJPDES permittees for air pollutant emissions through the Water Pollution Control Program.

RESPONSE: The Department is not regulating air emissions through the NJPDES permit program. In establishing the SIU risk factors, the Department considered the potential environmental impact posed by a pollutant in an SIU wastestream to the air quality as well as impacts on receiving POTWs, surface water and ground water. The NJPDES permit fee is based upon the quantity of pollutants discharged in the wastewater and the risk associated with the discharge of that pollutant.

COMMENT: The risk factor for Biochemical Oxygen Demand (BOD) discharged to surface water is 100 while only one for an SIU. The same is true for suspended solids. A pound of BOD or Total Suspended Solids (TSS) is a pound, how can the Department justify different risk factors.

RESPONSE: Conventional pollutants such as BOD and TSS discharged to a POTW may be pretreated by the SIU before discharge and treated again at the POTW. In addition, POTW's are normally designed to treat conventional pollutants. Discharges to surface water do not have the benefit of the "double" treatment SIU dischargers often receive. Some direct discharges are not even treated prior to discharge. The SIU risk factors for BOD and TSS reflect the reduced environmental impact as a result of POTW treatment.

COMMENT: Chemical Oxygen Demand (COD) in indirect discharges should be assigned a risk factor of one because COD includes BOD and inorganic salts which are oxidizable at the POTW.

RESPONSE: The Department agrees with the commenter. COD has been added to Table I with a risk factor of one. The risk factor for COD

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from an indirect discharge should be one, unless COD is being utilized as an indicator parameter. Where COD monitoring is being conducted to monitor other pollutants, the risk factor for the other pollutants will apply.

N.J.A.C. 7:14A-1.8(h) Minimum Fee Schedule

COMMENT: The Department has not provided a rationale for assessing the minimum fee in addition to the environmental impact load calculated for Hazardous Waste Facilities and Industrial Waste Management Facilities. The commenter stated that he thought that the fee structure was established to reflect the cost of managing the NJPDES permit program and to assess those costs according to the environmental impact load.

RESPONSE: The Department is authorized to assess reasonable annual permit fees to cover the cost associated with the NJPDES permit program. The minimum fee schedules described in N.J.A.C 7:14A-1.8(h) reflect the basic administrative cost associated with the processing, monitoring and administering of various types of NJPDES permits. The Department established higher minimum fees for facilities classified as industrial waste management facilities and hazardous waste management facilities because these permits require a higher level of regulatory effort by the Department. Both State and Federal laws have singled out hazardous wastes for greater regulation. Assessing higher minimum fees to Hazardous Waste Facilities (HWFs) and Industrial Waste Management Facilities (IWMFs) is appropriate as it distributes a greater share of the NJPDES permit program costs to those facilities which demand a greater quantity of the Department's resources to process, monitor and administer NJPDES permits.

COMMENT: A commenter stated that the "minimum fee" is not truly a minimum fee. In the NJPDES fee structure the minimum fee is the base amount added to the amount calculated using the environmental impact formula. The Department should stop calling this fee, a "minimum fee" but rather call it a "base fee."

RESPONSE: The Department agrees with the commenter's observation that the minimum fee is a "base fee." The minimum fee as defined at N.J.A.C. 7:14A-1.8(a)9 is a base cost which is added to the calculated individual fee based on environmental impact.

COMMENT: The changes proposed to the minium fee structure appear significant, and would likely contribute much of the Department's additional $4.6 million.

RESPONSE: The changes in the minimum fee structure will not increase the total amount of revenue to be received by the Department. Rate, which is used to determine the environmental impact portion of the fee, is calculated based on the adjusted budget. The adjusted budget is the amount which will not be collected as minimum fees. Therefore, this proposal alone will not increase revenue $4.6 million as suggested by the commenter.

COMMENT: One commenter suggested that the Department increase the minimum fee for facilities assigned a ground water monitoring status of two from $500.00 to $1,000.

RESPONSE: The only changes to the minimum fee schedule proposed at this time are those assessed for discharges to ground water at Hazardous Waste Facilities and Industrial Waste Management Facilities. Further analysis of the minimum fee structure is required before the Department proposes any further adjustments.

COMMENT: Increase the minimum fee schedule in N.J.A.C. 7:14A-1.8(h) in proportion to the annual increase in each budget category. This will better distribute the administrative costs of the NJPDES permit program and more equitably reflect the actual costs of individual permit actions.

RESPONSE: As stated above, the Department has only changed the minimum fee schedule for Hazardous Waste Facilities and Industrial Waste Management Facilities. The Department will evaluate this suggestion in the future rule proposals.

COMMENT: The minimum fee for surface water dischargers in N.J.A.C. 7:14A-1.8(h) is too low. Minimum fees should represent the amount of regulatory burden common to all regulated facilities.

RESPONSE: As stated above, the minimum fee schedule requires additional evaluation. The Department will evaluate this proposal in the future.

COMMENT: The minimum fee for facilities actively discharging to ground water should be increased significantly. A higher fee would encourage facilities to reduce the volume and pollutants in their discharge. A facility which is remediating a past discharge has no opportunity to undo the condition and cannot be induced by higher minimum fees to minimize the environmental impact.

RESPONSE: The environmental impact for facilities that are permitted to discharge pollutants to the ground water is calculated in accordance with N.J.A.C. 7:14A-1.8(d)1; the environmetnal impact for facilities with ground water contamination is calculated pursuant to N.J.A.C. 7:14A-1.8(d)2. The ground water permit fee reflects the degree of risk posed by the discharge to public health and the environment. The Department, through a NJPDES permit, controls the discharge through the establishment of discharge limitations in the NJPDES permit. Wastewater discharges must conform with the established limit. Noncompliance results in enforcement action, and penalties. The effect of the NJPDES permit fee on an active ground water discharge is incidental to the basis of the fee. Facilities which have been permitted to control and remediate a past discharge activity can effectively reduce their fee assessment by delineating the plume of ground water contamination, removing the source of pollution, and remediating the contaminated ground water. Reducing the areal extent and the concentration of contaminants through remedial activities will reduce the NJPDES permit fee assessment.

COMMENT: Our facility's ground water discharge permit fee is based on an improper classification as a Hazardous Waste Facility. The regulated surface impoundments no longer exist, as we have complied with the Department's closure requirements. No hazardous wastes are stored at this site. Volatile organic contamination in the ground water was caused by spills on the ground.

RESPONSE: The classification as a Hazardous Waste Facility or an Industrial Waste Management Facility (HWF) is based on the Federal definition in the Resource Conservation Recovery Act (RCRA), 42 U.S.C. §6901 et seq. These facilities have been singled out for greater regulation. The Department will assess the basic ground water minimum fees listed in N.J.A.C. 7:14A-1.8(h)2i through iii, if the NJPDES ground water permit requires ground water monitoring activities that are unrelated to the RCRA regulated activities. A facility classified as a HWF because of a drum storage area would be assessed the lower minimum fees until the NJPDES monitoring requirements were modified to require facility-wide monitoring to evaluate potential discharges from these units, spills, or other unregulated units. The situation described by the commenter would be subject to the minimum fees for HWF. Although the RCRA regulated surface impoundment has been closed and the permittee no longer stores hazardous wastes at the site, the NJPDES permit requires site-wide monitoring.

COMMENT: The Department has again proposed to increase the minimum fee for hazardous waste facilities, which essentially doubles the facility's permit fee. This has been proposed even though the proposed budget for FY91 is only $400,000 more than the FY89 expenditures.

RESPONSE: The new minimum fee schedule recognizes the level of activity at the regulated facility. Only the minimum fee for those permittees conducting compliance monitoring which represents the greatest environmental impact and demand a greater amount of the Department's resources have been increased. For those facilities conducting detection monitoring the minimum fee decreased from $20,000 to $10,000, while the minimum fee for those facilities conducting corrective action remains the same. The increase in the minimum fees alone does not result in added revenue for the Department. Fees are assessed based upon an annually adjusted program budget. A category rate is then established in accordance with N.J.A.C. 7:14A-1.8 which distributes the remaining costs that will not be recovered through minimum fees.

COMMENT: The Department should have provided a grace period of about a year before the new minimum fees for Hazardous Waste Facilities and Industrial Waste Management Facilities become effective. We are close to implementing our remediation program. If we knew that the minimum fee was increasing, we could have moved ahead faster.

RESPONSE: In the adoption notice that appeared in the New Jersey Register on April 1, 1990 (22 N.J.R. 1124(a), 1130), the Department indicated that it would consider establishing a tiered minimum fee structure for Hazardous Waste Facilities (HWFs) and Industrial Waste Management Facilities (IWMFs) that would significantly increase fees for those facilities conducting compliance monitoring in the near future. On June 4, 1990, a notice of Pre-Proposal appeared in the New Jersey Register (22 N.J.R. 1652(a)), that indicated that the Department was considering the establishment of a tiered minimum fee schedule for HWFs and IWMFs. The Department has provided ample notice of its intent to increase the minimum fees for HWFs and IWMFs. The argument that "more notice or a grace period for implementation would have been more equitable because a facility could have cleaned up a site more rapidly" and been assessed a lower fee has no merit.

COMMENT: The Department cannot issue and administer a permit for $2,500, the cost paid over five years. It takes about eight man-weeks

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to write the average permit, which is significantly over the $2,500 before adding the administrative costs, and other charges. The Department has kept the minimum fee artificially low to minimize the number of complaints.

RESPONSE: The Department agrees with the commenter's observation that the basic minimum cost assessed does not cover the initial cost to issue the permit. The Department's fee assessment methodology has been to distribute a significant part of NJPDES program costs based upon environmental impact. However, the Department has not proposed to change the minimum fees at this time.

The following comments pertain to the Annual Fee Report and Fee Schedule. The Department's responses to these comments are provided in the Public Notice section of this issue of the New Jersey Register.

COMMENT: The commenter objects to the Department's fee assessment methodology, and considers these fees to be excessive, unfairly applied, and scientifically flawed.

COMMENT: Major inequities still exist in the cost-sharing system of the NJPDES fee program. While attempts have been made to distribute the costs to those dischargers who contribute the greatest "environmental impact," it is still unclear how the excessive fees listed in the 1990-91 fee schedule can be justified in terms of the amount of NJPDES-related activities associated with these facilities. Fee increases of several hundred to several thousand percent over the past several years for some dischargers cannot by any means be correlated with similar increases in associated NJPDES discharger activities or substantial changes in the discharger's environmental impacts.

COMMENT: Appendix D provides a listing of titles funded through the NJPDES program. Appendix G provides an organization chart for the Department. The commenter wants to know which specific titles in the organization are being funded.

COMMENT: Appendix D does not show any fees proposed for the Director or Deputy Director positions. Does this mean that NJPDES fees do not fund these positions?

COMMENT: A commenter requested that the Department define a "work year" and the hours worked by Department personnel.

COMMENT: A commenter requested that the Department provide a brief description of several unclear work tasks listed in Appendix E including Technical Support—Biomonitoring, POTW oversite, TMDL's and Water Quality Assessment, Storm Water and CSO Technical Support, Surface Water Quality Standards, 304(1) Sampling, and Bioassay testing.

COMMENT: The Department has included proposed expenditures for the FY91 budget in Appendix F for OTIS data processing, Professional Services and Temporary Services. What are these operating expenses for?

COMMENT: The Department uses several terms in Appendix G to calculate program expenditures for FY89 and FY90. Please define the terms: Direct coding, Category percent, Administrative cost, Related costs, Treasury Assessment, Cost—Revenue.

COMMENT: One commenter stated that the proposed fee structure does not necessarily assess higher fees against those responsible for ground water contamination. The concept of having the "polluter pay" makes sense for permits which regulate an on-going discharge activity.

COMMENT: Several commenters stated that the comment period should be extended to comply with the spirit of the Administrative Procedure Act which requires a sincere and diligent effort to secure the comments from the public by the regulatory agency.

COMMENT: The NJPDES Fee Schedule is not the proper mechanism for furthering the Department of Environmental Protection's policy goals. There appears to be a basic misapplication of the statute in further encumbering the existing fee structure with items related to the pursuit of policy goals which may or may not be related to the costs of administering the NJPDES permit program.

COMMENT: If a program of taxation is to be undertaken under any statute, there should be ample opportunity to evaluate economic impact of the program. By skewing NJPDES permit fees towards activities which are purported to be more toxic producing, it is quite likely that those industries already most impacted by new laws and regulations explicitly intended to control toxics will be made more economical.

COMMENT: New Jersey, having recently lost more jobs than any other state in the nation, should consider the ability of the industries that are likely to receive the greatest impact of this regulatory change, to pay for these costs.

COMMENT: The proposed fee structure does not reflect the Department's cost for handling individual permit and permit applications.

COMMENT: If the Department wishes to pursue the economic theory of having the "polluter pay," it should seek the appropriate taxing authority or assess penalties for noncompliance using that principle.

COMMENT: The cost of monitoring one plant could not possibly approach 10 percent of the total program cost.

COMMENT: The Department should be able to revise the testing requirements on an ongoing basis without modifying the entire NJPDES permit.

COMMENT: Keep in mind that certain pollutants may be eliminated from the discharge when economically feasible. That is, use the assessment of fees to clean up the environment not only to generate revenue to administer compliance.

COMMENT: The Department should assign all positions funded from the NJPDES surface and ground water accounts to activities related to the processing, monitoring and administering of NJPDES permits.

COMMENT: The Department should organize and classify the work to increase the productivity per unit of manpower available.

COMMENT: The Department should demonstrate a commitment to results by publishing planned output targets and actual outputs on a weekly basis through Statewide newspapers of New Jersey.

COMMENT: The Department is not providing any funds for the facilities to upgrade the operators that work at our facilities.

COMMENT: Why is the Department monitoring and assessing permit fees on a interstate waterway? Why is the United States Environmental Protection Agency (USEPA) or the Interstate Sanitation Commission (ISC) which regulates such operations, not assessing permit fees?

COMMENT: In April 1989, we terminated our discharge to the local sewer authority and are now trucking our wastewater to DuPont. The Department has assessed a fee based on our discharge in 1989. The Department should reassess this fee based on the actual discharge.

COMMENT: My renewal permit application and industrial pretreatment program have been at the Department for review for up to two years. Is it a lack of personnel? It certainly cannot be a lack of money.

COMMENT: The commenter stated that the Office of Legislative Services was doing an audit of the NJPDES program. The commenter wanted to know if the audit had been completed and where to obtain the results.

COMMENT: We have reviewed the limited explanation pertaining to the almost 10 percent increase in the total budget from 1990 to 1991. In the current period of economic stress, particularly when the Governor of New Jersey has ordered all departments to cut costs, there is no justification for such an increase. The commenter suggested that the situation be reviewed and appropriate cuts be made.

COMMENT: One commenter stated that pollutants may have been assigned different risk factors depending on whether the discharge is to the surface or ground waters of the State. The commenter stated that the same risk should be assigned to the pollutant.

COMMENT: The Department has not accounted for new facilities which will be brought into the NJPDES program. New program initiatives such as the Underground Storage Tank (UST) program will add many new permittees to the NJPDES program. The Department should be able to predict the number of new permits to be issued and the additional fees that the Department will receive. Permit fees paid by existing dischargers should not be used to regulate newly discovered sites. The Department should fund these permitting activities through permit fees paid by these facilities or penalties. Failure to do so would indicate that the existing permittees will be paying for services demanded by these newly added permittees.

COMMENT: The Department has included numerous activities outside the intended scope of the NJPDES rule, in particular, the cost of enforcement activities. These costs should not be borne solely by NJPDES permitted facilities, when the Department's authority to impose such costs is highly questionable. The passing of the Clean Water Enforcement Act will dramatically increase the Department's budget, with NJPDES dischargers slated to pick up the entire cost.

COMMENT: The NJPDES program budget has increased tremendously over the past few years. Yearly fee increases have not resulted in an appreciable increase in services. Is the Department funding other Department programs with NJPDES fees?

COMMENT: The United States Environmental Protection Agency provides the Department with funds to administer the NJPDES program. The Department does not mention how these funds are used.

COMMENT: The Department has included the cost to fund 40 vacant positons for the surface water program, although authorization has been received to fill 33. If the rest of State government is cutting back, the

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Department should be reducing the NJPDES program. The Department should not be permitted to impose unnecessary costs upon NJPDES permittees to avoid austerity measures which would otherwise be imposed.

COMMENT: The Department's proposed budget is not sufficiently detailed to allow for adequate review and verification that the costs included apply only to NJPDES related activities. The costs for some functions outside the NJPDES program may be funded through the NJPDES budget under the theory that their work is somehow useful in the NJPDES program. The Department has not published the distribution of costs for the various positions, nor even disclosed the method of timekeeping used to allocate staff time between NJPDES and non-NJPDES work.

COMMENT: The Department should reevaluate the proposed budget and look at areas where they can cut costs. The Department should eliminate those activities that are not necessary such as bioassay testing. NJPDES permittees are required by their permit to conduct bioassay testing using a Department certified laboratory. This activity is a duplication of effort for which NJPDES permit fees should not be expended.

COMMENT: The NJPDES budget includes a 32.7 percent "indirect cost" rate. It is not clear what is meant by "indirect cost" but to the extent that it may apply to such directly unrelated functions (Commissioner's Office, Division of Financial Management, or even the Governor's Office), they should not be funded by NJPDES permit fees.

COMMENT: The actual personnel costs for FY90 were $14 million. The budget personnel cost for FY91 are $16.2 million, which is an increase of $2.2 million. The Department has not provided any explanation for such an increase.

COMMENT: The Department assures that computer reports of the program's operating expenditures are available. However, the Department has provided no indication that such data will be audited to assure the accuracy of such information.

COMMENT: The cost for pagers is hard to understand, as this program is not regularly involved with emergency services.

COMMENT: If the Department expects the regulated community to pay for services it is receiving, it must also be prepared to account for those services just as a private business must be accountable to its customers.

COMMENT: If there is a hiring freeze at the Department, how are these new positions to be filled? If these positions are not going to be filled, how can we expect better service? There is a tremendous backlog of outstanding permits at the Department. Is the regulated community getting anything more for the increased fees. When can we expect the better service to begin?

COMMENT: We suggest that the excess funds collected in past years under the NJPDES system be maintained in the system to stabilize the rates. So far we have been paying for increased service each year and not receiving it.

COMMENT: Overall State spending in State government is dropping eight percent at a time when the municipal budget for the NJPDES program is rising by 32 percent. The municipal budget was $5.2 million in FY90, and is being increased to $6.88 million in FY91. The Annual Fee Report fails to document the detailed basis in support of increased fees.

COMMENT: The Annual Fee Report fails to report on the accomplishments in FY90 that would justify further increases in the budget. Lack of productivity in the permit program will compound as we move into 1991 without reconciling many of the policy and operating differences that have caused municipal permittees to appeal their permits. The net result is a system that underperforms and leaves municipal entities vulnerable to challenge for "paper" violations of their permit which could be corrected if the permit issuance system could work at a reasonable rate.

COMMENT: The Department sent the proposed fee assessments to the NJPDES permittees in December. This notice came after our budget was due to the Department of Community Affairs. Our budget must be approved by the Utility Commissioners in September or October. So, we start in June. We cannot come up with this kind of fee after our budget has been approved by the Department of Community Affairs.

COMMENT: The Department has included Clean Water Enforcement in the FY91 NJPDES budget. While there may be a need for some positions, we are being asked to pay for a big chunk, without any real knowledge of the costs.

COMMENT: Why has the Department included the costs for the Deputy Attorney General's Office in the Division of Law and Public Safety in the NJPDES budget?

COMMENT: There is a distinct need for a NJPDES program audit. A thorough audit of positions funded through NJPDES fees should be conducted to ascertain job functions and responsibilities. A time audit should also be performed on individuals who are funded by NJPDES fees so as to determine what time was spent on which facility so as to determine if there truly exists a correlation between fees charged and the time spent on a permittee.

COMMENT: The assignment of risk factors is arbitrary. Risks are assigned to classes of contaminants. For example, total volatile organics in ground water are assigned a risk factor of 100,000. Clearly, within this broad class of compounds comprising volatile organics, there is represented a wide spectrum of human and ecological risk factors. Human health impacts could range from benzene, (carcinogen which is classified as a Category A by EPA) to ethyl alcohol (routinely consumed as a beverage). Under the existing system, these compounds are both assigned the same risk factor. A more refined categorization of chemicals should be made which truly groups compounds together on the basis of human health and/or ecological risks.

COMMENT: The impact of using stream rating factors to calculate surface water permit fees is inequitable. Surface water permit fees are directly proportional to the "Stream Factor". If a stream does not meet a designated use, the permittee is required to pay an increasing amount based on the degree of designated uses not being met. Clearly, in many cases this penalizes the permittee for the action of others. In many cases one party is not solely responsible for violating a designated use for a particular waterbody. Higher fees may be assessed as a result of impacts of other discharges on the receiving water.

COMMENT: The Department utilizes a "Stream Factor" to calculate surface water fees. While the Department has not proposed any changes, the commenter stated that the current structure for determining "designated use" is not always a function of the water quality or stream health. Designated uses for New Jersey's waters are fishable and swimmable. A swimmable designation is based on fecal coliform levels, while a fishable designation is based on fishery data obtained from State biologists. Water quality data was also factored into the decision-making process where no fisheries data was available, or when the water quality data identified specific problems. The commenter recommended that the Department modify the designated use factor and use the existing water classification. This would protect those reaches classified as trout maintenance, and if structured correctly, benefit those dischargers willing to locate or relocate into urban areas on SE2 or SE3 waters. In effect, fee reductions could be applied to those facilities discharging into SE2 and SE3 waters, where the streams meet their "designated uses".

COMMENT: The Surface Water Rating Factor assesses receiving water quality, designated uses and the attainment of designated uses. A discharger is effectively penalized for the quality of the receiving water into which it discharges. This is unfair since the dischargers may in no way be contributing to the level of pollution existing in the receiving water and may be complying with all conditions of their NJPDES permits. This appears to be in direct opposition to one of the primary aims of the NJPDES Fee program, which is supposedly to assess the program costs in direct proportion to the degree of environmental impact.

COMMENT: One commenter stated that it could be argued that effectively treated discharges could serve to dilute an otherwise polluted waterbody.

COMMENT: In receiving waters regulated by the Interstate Sanitation Commission (ISC), water quality is impacted by past and present point and non-point source discharges regulated, in varying degrees, by more than one regulatory authority. A fully compliant discharger in New Jersey is penalized due to non-compliant dischargers in other states, over which it has no control.

COMMENT: The "bioassay factor" included in the NJPDES surface water environmental impact calculation should be reevaluated in relation to the "stream rating factor". It is not clear how the bioassay factor relates to the quality and characteristics of the permittee's receiving water.

COMMENT: The Department should amend the environmental impact formula for the discharges to surface water to account for the parameter concentrations at the discharge points as well as their loadings. The commenter suggested that the present formula based on the total quantity of pollutants discharged favors facilities with small, toxic dischargers over those which may be treating waste very effectively but discharging large volumes.

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COMMENT: The Department may be overcharging facilities by using pollutants which are duplicate measurements of environmental impact, such as BOD-5, BOD-20, Nitrogen, and Dissolved Carbon. The commenter recommended that the Department utilize one indicator pollutant.

COMMENT: The Department states that the amended fee schedule ensures that those who do the most to introduce pollutants into the environment bear a greater share of the NJPDES administrative costs. The proposed fee schedule is grossly disproportionate to the effects of the effluent upon the receiving waters and is also unrelated to the volume of wastewater discharged.

COMMENT: West New York Utility Authority discharges 10 million gallons per day (MGD), Kearny Town Utility Authority discharges two MGD, while Passaic Valley Sewerage Commission (PVSC) treats up to 280 MGD and Bergen County Utilities Authority discharges 60 to 70 MGD. All four facilities have been assessed the maximum 10 percent fee for municipal surface water discharges. These assessments are clearly inequitable and discriminatory.

COMMENT: Several communities have entered into administrative consent orders or judicial consent orders with the Department and are complying with the terms of the agreement to upgrade treatment or eliminate the discharge. Communities have already settled penalty cases instituted against them by the Department. The assessed NJPDES fees are more than the penalties paid. These NJPDES permit fees constitute a hidden penalty and are an administrative form of double jeopardy, which is unfair and unreasonable.

COMMENT: The Department has not produced any evidence demonstrating the stream rating factor's relevance to the cost of either administering the NJPDES permit program or cleaning up the receiving stream. The Department has evaded the issue of why costs should vary for the same pollutants in different bodies of water, merely stating that the stream rating factors evaluate water quality and therefore, environmental impact.

COMMENT: The Water Quality Inventory Report indicates that neither the Hudson River or the Hackensack River meet their designated uses. During the past six years significant efforts have been made to clean up these rivers. The stream rating factors, based upon water quality data which was gathered in 1984, are obsolete and inaccurate.

COMMENT: The Hudson River is an interstate waterway which receives significant pollutants from New York. The Hudson River does not meet its designated use of fishable. The PCB's which were discharged from a General Electric Plant in Albany, New York resulted in a public health advisory on fish. The commenter stated that the stream factor is arbitrary and unreasonable because it requires New Jersey dischargers to pay increased fees because the receiving water does not meet designated uses as a result of pollutants emanating from outside New Jersey.

COMMENT: A commenter stated that a facility which discharges "clean" effluent to a highly polluted receiving water is assessed a greater proportion of the NJPDES budget than a facility which discharges polluting effluent into a clean receiving stream. This is contrary to the Department's intent to require those who do the most to introduce pollutants into the environment to bear a greater share of the administrative costs.

COMMENT: The Hudson River is significantly more polluted than the Hackensack River, yet both are assigned the same Stream Rating Factor of 1.49.

COMMENT: The Huson River is similar to the Delaware River Zone 2 (Trenton to Northeast Philadelphia) in terms of the quantity and quality of effluent discharged and the width of the river at the sample point. However, the Hudson River is assigned a stream rating factor of 1.49 compared to the Delaware River which is assigned a factor of 0.5. The assignment of stream rating factors is arbitrary, capricious and unreasonable and bears no relationship to the actual effect of the discharge, penalizing dischargers on polluted receiving streams.

COMMENT: One commenter stated that the municipal budget for FY91 was proposed at $6,881,075 of which surface water dischargers would be assessed $6,374,210. The Annual Fee Report listed municipal facilities assessed the 10 percent maximum fee at $673,863. The individual fee calculations listed these maximum fees correctly at $637,421.

COMMENT: The top 10 municipal permittees have been assessed nearly 73 percent of the municipal program cost. Clearly, this is not equitable.

COMMENT: Under current arrangements, the outfall authority is assessed a NJPDES fee, which is in turn allocated by the outfall authority, to the treatment plants which discharge to the outfall authority. The commenter stated that the individual treatment plants should be billed directly, rather than the Department assessing one fee to the outfall authority, because they perform bioassays which would effect their individual fee assessment.

COMMENT: Treatment plants which are required to achieve high levels of treatment because they discharge to sensitive receiving waters are assessed considerably lower fees. Ocean dischargers which require only secondary treatment because the receiving waters can assimilate large pollutant loadings are being penalized through higher fee assessments.

COMMENT: It can be argued that discharging to a pristine trout stream in Northwest New Jersey is a lot worse than dumping pollutants into the Hudson River, which is already dirty.

COMMENT: The Department has assigned eight work years to complete a projected 50 final municipal permits. This is about 280 hours to write a permit. This seems excessive when this program is not new.

COMMENT: Every permit issued for discharges to the Atlantic Ocean requires secondary treatment, and should be virtually the same permit. The Department should not require eight weeks to write each permit.

COMMENT: The proposed rule does not distinguish between those permittees that are responsible for pollutant releases and those current owners who had no involvement with the release. Many facilities enter the NJPDES program as a result of ground water pollution detected through the ECRA program, the Underground Storage Tank program and the Spill Act. In many cases, these ground water problems were created decades ago by entities long since gone. The present owner must pay the cost to remediate the ground water problem as well as NJPDES permit fees. This is inequitable and should be rectified.

COMMENT: The environmental impact for ground water discharges in compliance monitoring and corrective action are based on the limited pollutant concentrations. At many sites, natural ground water pollution sources exist or ground water pollution is migrating onto the permit holders property. These pollutants are included in the environmental impact calculation. The Department should incorporate a method to account for these types of occurrences.

COMMENT: The ground water environmental impact calculation does not distinguish between those permittees who are actively discharging pollutants into the environment and those permittees who are actively remediating the environment. In fact, those parties who are actively involved in remedial activities are often the most heavily assessed. Therefore, strong economic incentives exist for parties to resist or delay entering into the remedial phases of the ground water clean-up activities. Those parties for whom a discharge is a routine business occurrence should be provided with incentives to discontinue discharges.

COMMENT: In virtually every remediation project undertaken through an administrative consent order, the Department's oversite costs are reimbursed by the consenting party. The commenter recommended that fees be adjusted on a dollar for dollar basis or waived altogether for sites covered by administrative consent order or any other enforcement document which requires repayment of oversite costs.

COMMENT: The ECRA program also assesses fees to offset the Department's costs for ECRA clean-ups plan reviews, and every other stage of the ECRA process. NJPDES fees for ECRA sites should be adjusted to reflect any overlap in fee payments.

COMMENT: The proposed fee structure does not fairly distinguish between an active regulated discharge and ground water remediation activities. For on-going discharge activities, the Department can discourage discharges and induce facilities to seek alternative ways of managing and reducing wastewater. For ground water facilities without an on-going discharge activity, the NJPDES permit is for monitoring and remediating existing conditions. The current fee structure will discourage people from identifying ground water contamination and remediating these problems. The NJPDES program is a no-fault, strict liability program and the issuance of a permit to perform monitoring or remedial activity does not necessarily reflect any fault on the part of the permittee. Many remedial activities do not relate to profit-making operations and are taking place at closed facilities. Remedial activities do not add pollutants, rather these activities remove pollutants from the environment. Facilities should direct funds towards corrective measures rather than being assessed NJPDES permit fees.

COMMENT: One commenter stated that his ground water permit fee would exceed the cost of ground water remediation activities. The proposed fee bears no relationship to the Department's costs and is in fact a penalty.

COMMENT: One commenter's fee would fund six percent of the ground water program budget for FY91. The commenter stated that conditions at the site could not represent six percent of the ground water pollution in the state. The commenter thought the fee schedule as

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proposed is grossly unfair and fails to accomplish the Department's stated goals.

COMMENT: One commenter stated that his facility has been unable to obtain required permits to implement ground water remediation. As a result, his facility remains in compliance monitoring and pays a higher fee. The commenter stated that our NJPDES permit fee should provide sufficient financial support for the Department to provide the personnel necessary to review our application in a timely manner.

COMMENT: Recognizing that the Department must cover the cost with NJPDES permit fees, divide the budget by the number of permittees in the discharge category. This would result in an average fee of $8,000 for every permittee.

COMMENT: A commenter asked where is the Department going in the regulation of commercial facilities which are discharging unacceptable pollutants into the ground waters of the state. These sites may result in somebody else being responsible for clean-up.

Summary of Agency-Initiated Changes:

In Table 1, Risk Categories, under Surface Water, petroleum hydrocarbons is deleted from the 10^4 column, since it was added to the 10^2 column through this rulemaking.

In the Indirect Discharges listing, a number of specific items are set forth for clarity; these were already included in the Table under general categories, such as Base Neutral Compounds.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

7:14A-1.8 Fee schedule for NJPDES permittees and applicants

(a) The general conditions and applicability of the fee schedule for NJPDES permittees and applicants are as follows:

1.-2. (No change.)

3. All NJPDES permittees/applicants that are issued a draft or final NJPDES permit shall submit payment within 30 days of assessment of the fee by the Department.

i. Upon receipt of a completed application, the Department shall assess the minimum fee as set forth in (h) below.

ii. Upon issuance of the final permit, the annual fee shall be calculated and pro-rated for the period of the fee year remaining. The minimum fee already paid shall then be subtracted from the pro-rated assessment. In no case, however, will such payment of a pro-rated fee result in a fee that is less than the minimum fee for the category of discharge. The permittee may request a fee recalculation as provided at (a)*[8]****6*** below, once the first required monitoring report has been completed.

4.-8. (No change.)

9. The annual fee for all discharges is calculated by applying the formula: Fee = (Environmental Impact × Rate) + Minimum Fee, where:

i. Environmental Impact is the Department's assessment of potential risk of discharge to the environment as derived under (c) through (g) below.

ii. Rate is the dollar cost for each weighted unit of Environmental Impact. Rate is calculated as follows:

Rate = (Budget–Sum of Minimum Fees)/
Total Environmental Impact

(1) Budget is the total budget for the category of Discharge.

(2) The Sum of Minimum Fees is the total amount of minimum fees to be paid by all dischargers in the category of discharge. The minimum fee is a base cost added to the calculated individual fee. The minimum fees are set forth in (h) below.

(3) Total Environmental Impact is the sum of environmental impact for all dischargers in the category.

10. The Department shall use the total pollutant load as calculated in (c)1i below for surface water discharges, the quantity discharged as calculated in (d)1ii below for permittees subject to (d)1 below, or the total weighted concentration as calculated in (d)2ii below for permittees subject to (d)2 below to calculate environmental impact. The maximum fee to be assessed for any category of discharge shall be 10 percent of the budget for the category of discharge.

(b) (No change.)

(c) The annual fee for discharges to surface water is calculated by using the following Environmental Impact in the annual fee formula:

1. The Environmental Impact of a Discharge to Surface Water is derived by applying the formula: Environmental Impact = (Total Pollutant Load + Heat Load) × (Bioassay Factor + Stream Factor), where:

i. Total Pollutant Load is the sum of all limited pollutants (in kilograms per day) multiplied by their associated risk factors as listed in Table 1.

(1) Net loadings will be used if a net limit has been established in the NJPDES permit. If a permittee reports a pollutant load less than zero, a zero will be used to calculate the Total Pollutant Load.

(2) Volatile organic compounds, acid extractable compounds, base-neutral organic compounds, pesticides and PCB's will be deleted from the Total Pollutant Load, if reported as non-detectable in all samples for the monitoring period. For all other pollutants, and volatile organic compounds, acid extractable compounds, base-neutral organic compounds, pesticides, and PCB's detected at least once in the monitoring period, the Department shall calculate the Total Pollutant Load using one-half the reported minimum detection limit for pollutant concentrations.

ii.-iii. (No change.)

iv. Stream factor is the sum of the reported Water Quality Index (listed in the New Jersey Water Quality Inventory Report, prepared by the Division of Water Resources and available from the Department) divided by 100, the reported Water Use Index (listed in the New Jersey Water Quality Inventory Report) divided by 50, and the Designated Use Index (derived from the New Jersey Water Quality Inventory Report) assigned by the Department as follows:

Designated Use	Uses met in the Stream Segment
1.00	Segment does not meet designated uses.
0.75	Sometimes meets one use, or a small portion of the watershed meets designated uses.
0.50	Segment meets one designated use.
0.25	A small portion of the watershed does not meet or seasonally does not meet all designated uses.
0.00	All designated uses are met in the watershed.

Note: Designated uses are established by N.J.A.C. 7:9-4. The Department shall use the most recent edition of New Jersey Water Quality Inventory Report.

2. (No change.)

(d) The annual fee for discharges to ground water, except for residuals and landfills covered in (e) and (f) below, is based upon the level of monitoring and/or remedial activity required by the Department at the permitted site. Permittees not required to conduct ground water monitoring shall use the Environmental Impact in d(1) below in the annual fee formula. Permittees required by the Department to conduct ground water monitoring, which is defined as monitoring performed by the permittee to determine whether current or past discharges have resulted in environmental impact, shall use the Environmental Impact in d(1) below in the annual fee formula. Permittees which are required by the Department, in a NJPDES permit, administrative order, administrative consent order, directive letter, or other form of notice, to conduct compliance monitoring in accordance with N.J.A.C. 7:14A-6.15, source removal, and/or ground water remediation, shall use the Environmental Impact in d(2) below in the annual fee formula.

1. The Environmental Impact of a Discharge to Ground Water for permittees not required to conduct ground water monitoring or permittees required to conduct detection monitoring is derived by applying the formula: Environmental Impact = (Risk × Quantity × Ground Water Rating Factor) where:

i.-ii. (No change.)

iii. Ground Water Rating Factor is the sum of the Ground Water Monitoring Status Factor, the Aquifer Factor, Ground Water Use Factor and Permeability Rating divided by 10 where:

(1)-(3) (No change.)

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(4) Permeability Factor is the rating number, based on hydraulic conductivity in centimeters per second, of the geological formation immediately beneath or facility liner material. Facilities assigned a Ground Water Monitoring Status factor of 10, that have demonstrated control of the plume of ground water contamination shall be assigned a permeability factor of 10. Where permeability is not provided to the Department by the permittee, the Department shall assume a permeability factor of 10^{-2}. The rating numbers are assigned as follows:

Rating	Permeability
10	10^{-7}
11	10^{-6}
12	10^{-5}
14	10^{-4}
18	10^{-3}
20	10^{-2}
22	10^{-2}

2. The Environmental Impact for a Discharge to Ground Water for permittees required to conduct compliance monitoring, source removal, and/or ground water remediation is derived by applying the formula: Environmental Impact = (Area × Total Weighted Concentration × Ground Water Rating Factor) where:

i. (No change.)

ii. Total Weighted Concentration is the sum of all pollutant concentrations limited in the NJPDES permit and converted to milligrams per liter (mg/l) multiplied by their associated risk as listed in Table I. The highest average pollutant concentration detected in any well during the monitoring period selected by the Department in (a)7 above shall be used unless the permittee has delineated the extent of plume as required by their NJPDES permit. Where plume has been delineated, the Department shall use the average pollutant concentration for all wells for the monitoring period selected by the Department in (a)7 above.

(1) Volatile organic compounds, acid extractable compounds, base-neutral organic compounds, pesticides and PCB's will be deleted from the Total Pollutant *[Load]* ***Concentration***, if reported as non-detectable in all samples for the monitoring period. ***To calculate the average concentration for a delineated plume, the Department will use zeros for these pollutant concentrations if not detected in a well.*** For all other pollutants, and volatile organic compounds, acid extractable compounds, base-neutral organic compounds, pesticides, and PCB's detected once, the Department shall calculate the Total Weighted Concentration using one-half the reported minimum detection limit for pollutant concentrations.

iii. (No change.)

(e)-(f) (No change.)

(g) The annual fee for discharges by a significant indirect user to a domestic treatment works is calculated by using the following Environmental Impact in the annual fee formula:

1. The Environmental Impact of a Discharge by a significant indirect user (SIU) to a domestic treatment works (DTW) is derived by applying the formula: Environmental Impact = (Total Pollutant Load)

i. Total Pollutant Load is the sum of all limited pollutants (in kilograms per day) multiplied by their associated risk factors as listed in Table I.

(1) Volatile organic compounds, acid extractable compounds, base-neutral organic compounds, pesticides and PCB's will be deleted from the Total Pollutant Load, if reported as non-detectable in all samples for the monitoring period. For all other pollutants, and volatile organic compounds, acid extractable compounds, base-neutral organic compounds, pesticides, and PCB's detected once, the Department shall calculate the Total Pollutant Load using one-half the reported minimum detection limit for pollutant concentrations. The Department shall use one-half the reported detection limit for pollutant concentrations reported as non-detectable to calculate the Total Pollutant Load.

(h) Minimum fees are as follows:

1. (No change.)

2. The minimum fee for Discharge to Ground Water (DGW) permits, except for residuals and landfills covered in (h)3 and 4 below, shall be assessed as follows:

i.-iv. (No change.)

v. Hazardous Waste Facilities regulated by N.J.A.C. 7:26, Industrial Waste Management Facilities (IWMF) regulated by N.J.A.C. 7:14A-4, facilities that have been issued a NJPDES DGW/IWMF permit, facilities with a DGW/IWMF permit-by-rule and facilities with a NJPDES ground water permit for a Resource Conservation Recovery Act (RCRA) unit assigned a Ground Water Monitoring Status of 1 or 2 shall be assessed a minimum fee of $10,000;

vi. Hazardous Waste Facilities regulated by N.J.A.C. 7:26, Industrial Waste Management Facilities (IWMF) regulated by N.J.A.C. 7:14A-4, facilities that have been issued a NJPDES DGW/IWMF permit and facilities with a DGW/IWMF permit-by-rule and facilities with a NJPDES ground water permit for a RCRA unit assigned a Ground Water Monitoring Status of 5 shall be assessed a minimum fee of $20,000; and

vii. Hazardous Waste Facilities regulated by N.J.A.C. 7:26, Industrial Waste Management Facilities (IWMF) regulated by N.J.A.C. 7:14A-4, facilities that have been issued a NJPDES DGW/IWMF permit and facilities with a DGW/IWMF permit-by-rule and facilities with a NJPDES Ground Water permit for a RCRA unit assigned a Ground Water Monitoring Status of 10 shall be assessed a minimum fee of $40,000.

3.-7. (No change.)

8. The minimum fee for land based soil treatment operation shall be $1,500 except for a RCRA unit which shall be subject to the minimum fee of $20,000.

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TABLE I
RISK CATEGORIES

Risk Factor 10^0	10^1	10^2	10^3	10^4	10^5
			SURFACE WATER		
TDS	TSS	Tin	Styrene	*[Petroleum hydrocarbons]*	Lead
Chloride	Phosphorus	Aluminum	Nickel	Arsenic	Mercury
Sulfate	Phtahalic Acid	Antimony	Copper	Beryllium	Cadmium
Fluoride	Sulfide	Barium	Silver	Asbestos	Chromium-hex
Iron	Molybdenum	Chromium-trivalent	Cobalt	Acid fraction compounds	Pesticides
	Bismuth	Oil & Grease	Ammonia	Base-Neutral	PCB
	Manganese	Surfactants	Cyanide	Compounds	PBB
	Zinc	N(nitrite, nitrate Kjeldhal, diss. & Total)	Selenium	Volatile Organics	
		Oxidizable Matter			
		Petroleum Hydrocarbons			
			GROUND WATER		
TSS	TDS	Iron	Silver	Lead	Mercury
Aluminum	Chloride	Manganese	Fluoride	Arsenic	Cadmium
Phosphorus	Sodium	Chromium-trivalent	Barium	Beryllium	Chromium-hex
	Antimony	Zinc	Nitrate	Pesticides	Petroleum
	Bismuth	Copper	Phenol	Acid fraction compounds	hydrocarbons
	Sulfate	Ammonia	Cobalt	Base-Neutrals	Total Volatile
		Oil & Grease	Selenium		Organics (including TTHM)
		Surfactants	Nickel		
		Oxidizable Matter			
		TOC			
			INDIRECT DISCHARGERS		
BOD	TDS	1, 1-Dichloroethylene	Nickel	Beryllium	Carbon Tetrachloride
TSS	Iron	Copper	Silver	1,1,1-Trichloroethane	Mercury
COD	Antimony	Zinc	Asbestos	Lead	Cadmium
	Bismuth	Chromium-Trivalent	Cobalt	Arsenic	Chromium, hex & Total
	Tin	Barium	Selenium	Bis (2-ethylhexyl) phthalate	Pesticides
	Manganese	Cyanide	Benzene	Dichlorodifluoromethane	PCBs
	Inorganic Sulfur Compounds	Dimethyl phthalate	1,2-Dichloroethane	Trichlorofluoromethane	Dioxin
		Surfactants	Chloroform	Total Toxic Organics**	
		Oil & Grease	Ethylbenzene	Volatile Organics*	
		Petroleum Hydrocarbons	Naphthalene	TVOS as in N.J.A.C. 7:27-17.3**	
		Total Toxic Metals**	1,2,4-Trichlorobenzene	***Chlorobenzene***	
		Nitrogen Compounds/ Ammonia	Vinyl Chloride	***Toluene***	
		Phenols	Base Neutral Compounds*	***1,2-Trans-Dichloroethylene***	
			Acid Extractables Compounds*	***Trichloroethylene***	
			1,1,2,2-Tetrachloroethane		
			Bromoethane		
			1,2-Dichloropropane		
			1,1-Dichloroethane		
			1,1,2-Trichloroethane		
			Dichlorobenzene		
			Di-n-butyl phthalate		
			Anthracene		
			Tetrachloroethylene		
			Pentachlorophenol		
			Butyl Benzyl Phthalate		
			Di-n-octyl Phthalate		

*Unlisted
**Not Itemized

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(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Removal of Iron Dextran and Strontium Sulfide from the Lists of Hazardous Wastes

Adopted Amendments: N.J.A.C. 7:26-8.15 and 8.16

Proposed: January 7, 1991 at 23 N.J.R. 44(a).
Adopted: March 18, 1991 by Scott A. Weiner, Commissioner, Department of Environmental Protection.
Filed: March 21, 1991 as R.1991 d.209, **without change.**
Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6.
DEP Docket Number: 044-90-12.
Effective Date: April 15, 1991.
Expiration Date: October 25, 1995.

Summary of Public Comments and Agency Responses:
The amendments were proposed January 7, 1990. The public comment period closed March 8, 1991. **No comments were received.** The amendments are being adopted without change.

Full text of the adoption follows.

7:26-8.15 Discarded commercial chemical products, off-specification species, containers and spill residues thereof

(a) The following discarded commercial chemical products, manufactured for commercial or manufacturing use, their off-specification species, or their container residues or spill residues are hazardous wastes if and when they are a solid waste as defined at N.J.A.C. 7:26-1.6:

1.-4. (No change.)

5. The following commercial chemical products or manufacturing chemical intermediates, referred to in (a)1 through 4 above, are identified as acute hazardous waste (H). These wastes and their corresponding EPA Hazardous Waste Numbers are:

Hazardous Waste Number	Substance

6. The following commercial chemical products or manufacturing chemical intermediates, referred to in (a)1, 2 and 4 above, are identified as toxic wastes (T) unless otherwise designated. These wastes and their corresponding EPA Hazardous Waste Numbers are:

HAZARDOUS WASTE NUMBER	SUBSTANCE

7. (No change.)

7:26-8.16 Hazardous constituents

(a) Waste streams containing the hazardous constituents listed below, classified as hazardous waste by the generator or the Department pursuant to N.J.A.C. 7:26-8.6 and 8.7, shall be manifested with the corresponding waste code numbers. Test methods approved by the Department shall be used in determining whether the waste in question contains a given hazardous constituent.

(b) (No change.)

(b)

DIVISION OF ENVIRONMENTAL QUALITY

Notice of Administrative Correction and Change
Air Pollution Control
Control and Prohibition of Open Burning
Sulfur in Fuels
N.J.A.C. 7:27-2 and 9

Take notice that the Department of Environmental Protection has discovered errors in, and the need for Departmental organization reflective and clarifying punctuation and stylistic changes to, the current text of N.J.A.C. 7:27-2 and 9.

At N.J.A.C. 7:27-2.3(a), the unnecessary uses of "or" in the phrase "garbage or trade waste or buildings" are replaced by commas. In subsection (d), the misspelling "soley" is corrected as "solely," as reflected in the rule adoption document (see R.1975 d.326).

At N.J.A.C. 7:27-2.5(c), a comma is added after the word "necessary" to clearly separate the sentence's second and third clauses. In paragraph (d)6, the word "infected" is changed to "infested" to conform the text to the rule as adopted (see R.1975 d.326). An "and" is added at the end of paragraph (d)6 as a proper conjunction reflecting the paragraphs (d)1 through 7 series, in keeping with current Code style.

At N.J.A.C. 7:27-2.6(c), the phrase "until a permit is current" is changed to "until a permit is issued and current." In subsection (d), the phrase ", on a form provided by the Department," is added after the word "application." Both changes conform the text to the rule as proposed and adopted (see 12 N.J.R. 690(a) and 13 N.J.R. 264(a)). An "and" is added at the end of paragraph (d)3 as a proper conjunction reflecting the paragraphs (d)1 through 4 series, in keeping with current Code style.

At N.J.A.C. 7:27-2.7(a), the article "a" is inserted before "finding of merit" for proper grammar. The Bureau of Air Pollution Control is changed to Bureau of Environmental Services in subsections (a) and (b) to reflect current Departmental organization. An "and" is added at the end of paragraph (d)5 as a proper conjunction reflecting the paragraphs (d)1 through 6 series, in keeping with current Code style.

At N.J.A.C. 7:27-2.8(a), the Bureau of Air Pollution Control is changed to Bureau of New Source Review to reflect current Departmental organization. In paragraph (d)2, the second use of "of" is corrected to "or" to conform the text to the rule as adopted (see R.1975 d.326). In paragraph (d)7, "of" is inserted between "disposed" and "by" for proper grammar, and an "and" is added at the end of the paragraph as a proper conjunction reflecting the paragraphs (d)1 through 8 series, in keeping with current Code style. In subparagraph (d)8i, the semicolon is moved from after to before "or," to correct a punctuation error.

At N.J.A.C. 7:27-2.9(a), a comma is inserted after "hedgerows," combined is changed to "commercial" and an "and" is added after "scale" to conform the text to the rule as proposed and adopted (see 12 N.J.R. 690(a) and 13 N.J.R. 264(a)). In subsection (e), a comma is inserted after "year" for proper punctuation. In subsection (f), "or hedgerows" is added after "herbaceous plant life" to conform the text to the rule as proposed and adopted (see 12 N.J.R. 690(a) and 13 N.J.R. 264(a)). An "and" is added at the end of paragraph (f)6 as a proper conjunction reflecting the paragraphs (f)1 through 7 series, in keeping with current Code style.

In N.J.A.C. 7:27-2.10(c), the phrase "favorable meteorological conditions" is changed to "favorable meteorological and air quality conditions" to conform the text to the proposed and adopted rule (see 12 N.J.R. 690(a) and 13 N.J.R. 264(a)). A comma is inserted after "year" for proper punctuation in subsection (e). In the first paragraph of subsection (f), "department" is changed to "Department" in keeping with current Code style. In paragraph (f)1, the comma after "application" is changed to a semicolon to correctly separate the first and second clauses and to conform the text to the adopted rule (see R.1975 d.326). An "and" is added at the end of paragraph (f)6 as a proper conjunction reflecting the paragraphs (f)1 through 7 series, in keeping with current Code style, and the comma after "instance" is deleted for proper punctuation.

In N.J.A.C. 7:27-2.11(a)1, the semicolon after "and" is removed to replace the comma after "resources," to correct a punctuation error.

In N.J.A.C. 7:27-2.12(a) and (b), Bureau of Air Pollution Control is changed to Bureau of Enforcement Services to reflect current Departmental organization. An "and" is added at the end of paragraph (d)5 as a proper conjunction reflecting the paragraphs (d)1 through 6 series, in keeping with current Code style.

In N.J.A.C. 7:27-2.13(b), technical changes are made to reflect current service fee payment practices and Departmental organization.

At N.J.A.C. 7:27-9.1, "Ambient Air Quality Standards," the term is changed to stylistically correct initial lower case, and a comma is inserted after "plant life" to logically separate the phrases "animal or plant life" and "or property." The definition of "oxygen (O_2)" is deleted, since this definition was proposed but not adopted (see 13 N.J.R. 870(a) and 14 N.J.R. 1452(a)). In the definition of "sulfur Dioxide (SO_2)," "Dioxide" is changed to stylistically correct initial lower case.

At N.J.A.C. 7:27-9.2(c), the term "hose" is changed to "those" to correct a typographic error in printing the adopted rule (see R.1982 d.456). In subsection (e), a comma is inserted after "outdoor air," and "facility by-products alone, or from the combustion of" is inserted between "combustion of" and "facility by-products" to conform the text

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to the adopted rule (see R.1982 d.456; 14 N.J.R. 1452(a)). Also in that subsection, the erroneous comma in the phrase "analysis of emissions" is deleted.

In N.J.A.C. 7:27-9.4(a)1 and 2, "and" at the end of each paragraph is deleted as unnecessary, in keeping with current Code style. In paragraph (a)3, "by a distance, measured from the stack" is inserted between "other stack" and "center lines" to conform the text to the proposed and adopted rule (see 13 N.J.R. 870(a) and 14 N.J.R. 1452(a)). In paragraph (c)2, the formula is corrected to conform the text to the rule as adopted (see 14 N.J.R. 1452(a)).

This notice of administrative correction and change is published in accordance with N.J.A.C. 1:30-2.7.

Full text of the corrected rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

7:27-2.3 Open burning of refuse

(a) No person shall cause, suffer, allow or permit the disposal of rubbish, garbage [or], trade waste [or], buildings or structures by open burning.

(b)-(d) (No change.)

7:27-2.5 Infested plant life

(a)-(b) (No change.)

(c) Such permit may be valid for a single event or for a period not to exceed 30 days, may be conditioned upon meteorological factors and any other requirements which the Department deems to be necessary, and is revocable at the discretion of the Department.

(d) No open burning shall commence until a permit is used and is current. Any person seeking a permit for the open burning of infested plant life shall file with the Department a permit application on a form provided by the Department, signed by both the applicant and the authorized agent, which sets forth the following information requested by the Department:

1. The name, address and telephone number of the person submitting the permit application; if such person is a legal entity, the name, title and address of the individual authorized to accept service or process on its behalf and the name of the officer in charge of the premises where [infected] **infested** plant life is to be burned;

2.-5. (No change.)

6. The exact location at which the infested plant life will be burned; **and**

7. (No change.)

7:27-2.6 Prescribed burning

(a)-(b) (No change.)

(c) The permit may be issued for a single event or for a period of days, and no prescribed burning shall commence until a permit is **issued and** current.

(d) Any persons seeking a permit for prescribed burning shall file with the Bureau of Forest Fire Management a permit application, **on a form provided by the Department,** which sets forth the following and any other information requested by the Bureau of Forest Fire Management:

1. The name, address and telephone number of the person submitting the permit application; if such person is a legal entity, the name, title and address of the individual authorized to accept the service of process on its behalf and the name of the officer in charge of the premises where the prescribed burning is to take place;

2. (No change.)

3. The exact location at which the prescribed burning is to take place; **and**

4. (No change.)

7:27-2.7 Emergencies

(a) The Department may issue a permit to a municipality for the open burning of plant life upon **a** finding of merit in an affidavit filed with the Bureau of [Air Pollution Control] **Enforcement Services** by the municipal clerk that excessive quantities of plant wastes have been produced by an emergency such as a wind storm or ice storm.

(b) The permit may be conditioned upon meterological factors and any other requirements which the Bureau of [Air Pollution Control] **Enforcement Services** deems to be necessary and is revocable at the discretion of the Department.

(c) (No change.)

(d) The affidavit shall set forth the following and any other information requested by the Department:

1.-4. (No change.)

5. The exact location(s) at which the plant life is to be burned; **and**

6. (No change.)

7:27-2.8 Dangerous material

(a) The Department may issue a permit for the open burning of dangerous material, except in any municipality which prohibits such open burning, where no other known method of disposal can be used without hazard to health or property, upon a finding of merit in an affidavit filed with the Bureau of [Air Pollution Control] **New Source Review** on a form provided by the Department by the person seeking to engage in such activity.

(b)-(c) (No change.)

(d) The affidavit shall set forth the following and any other information requested by the Department:

1. (No change.)

2. The type of business [of] **or** activity involved;

3.-6. (No change.)

7. Reasons why the dangerous material cannot be disposed **of** by any method other than by open burning without resulting in a hazard to health or property[.]; **and**

8. Measures undertaken to eliminate or to reduce the quantity of dangerous material to be disposed of by open burning;

i. Prior to the initial submittal of an affidavit; or[;]

ii. (No change.)

7:27-2.9 Herbaceous plant life and hedgerows

(a) The Department may issue a permit for the open burning on the premises where grown, of herbaceous plant life and plant life growing in hedgerows, except in any municipality which prohibits such burning, when the premises are actively in use for raising food crops or salt hay for commercial purposes and on a [combined] **commercial** scale **and** where no other effective method of disposal can be used without causing damage, economic or otherwise, to environmental or natural resources.

(b)-(d) (No change.)

(e) The permit may be issued for a period not to exceed seven days or for a period not to exceed 90 days or for a period not to exceed one year, and no open burning shall commence until a permit is issued and current.

(f) Any person seeking a permit for the open burning of herbaceous plant life **or hedgerows** shall file with the Bureau of Forest Fire Management a permit application on a form provided by the Department which sets forth the following and any other information requested by the Department:

1.-5. (No change.)

6. A detailed plan describing the nature and quantity of herbaceous plant life or hedgerows and how the open burning is to be done, including whether it is to take place in a single instance or the frequency if intermittent; **and**

7. (No change.)

7:27-2.10 Orchard prunings and cullings

(a)-(b) (No change.)

(c) The permit will be conditioned upon the confirmation with the Bureau of Forest Fire Management of favorable meteorological **and air quality** conditions on the day the open burning will be conducted.

(d) (No change.)

(e) The permit may be issued for a period not to exceed seven days or for a period not to exceed 90 days or for a period not to exceed one year, and no open burning shall commence until a permit is issued and current.

(f) Any person seeking a permit for the open burning of orchard prunings and cullings shall file with the Bureau of Forest Fire Management a permit application on a form provided by the [department] **Department** which sets forth the following and any other information requested by the [department] **Department**:

1. The name, address and telephone number of the person submitting the permit application[,]; if such person is a legal entity, the

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name, title and address of the individual authorized to accept service of process on its behalf and the name of the officer in charge of the premises where the open burning is to take place;

2.-5. (No change.)

6. A detailed plan describing the nature and quantity of herbaceous plant life or hedgerows and how the open burning is to be done, including whether it is to take place in a single instance[,] or the frequency if intermittent; **and**

7. (No change.)

7:27-2.11 Land clearing

(a) The Department may issue a permit for the open burning of plant life on the premises where grown, except in any municipality which prohibits such burning, upon a finding of merit in an affidavit, filed by the owner of such premises, which provides certification that:

1. No other effective method of disposal can be used without causing damage, economic or otherwise, to environmental or natural resources[,]; and[;]

2. (No change.)

(b)-(k) (No change.)

7:27-2.12 Special permit

(a) The Department may issue a special permit to any person, regardless of the provisions of any other section of this subchapter, for the open burning of any substance or material upon a finding of merit in an affidavit filed with the Bureau of [Air Pollution Control] **Enforcement Services** that such substance or material represents an imminent hazard to the public health, welfare, or safety.

(b) The permit may be conditioned upon any requirements which the Bureau of [Air Pollution Control] **Enforcement Services** deems to be necessary and is revocable at the discretion of the Department.

(c) (No change.)

(d) The affidavit shall set forth the following and any other information requested by the Department:

1.-4. (No change.)

5. The exact location(s) at which the open burning is to take place; **and**

6. (No change.)

7:27-2.13 Fees

(a) (No change.)

(b) Service fees shall be submitted in the form of a check or postal money order **made payable to the order of the Treasurer, State of New Jersey**. Fees [submitted] **paid** pursuant to N.J.A.C. 7:27-2.5, 2.9, 2.10, and 2.11 shall be [made payable to the order of the New Jersey] **submitted to the** Bureau of Forest Fire Management, **Division of Parks and Forestry**. Fees [submitted] **paid** pursuant to N.J.A.C. 7:27-2.7 and 2.8 shall be [made payable to the order of the New Jersey Bureau of Air Pollution Control] **submitted respectively to the Bureau of Enforcement Services and the Bureau of New Source Review, Division of Environmental Quality**.

7:27-9.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

. . .

"Ambient [Air Quality Standard] **air quality standard** means a limit on the concentration of a contaminant in the general outdoor atmosphere, which cannot be exceeded without causing or tending to cause injury to human health, welfare, animal or plant life, or property, or unreasonably interfering with the enjoyment of life and property, excluding all aspects of employer-employee relationship as to health and safety hazards.

. . .

["Oxygen (O_2)" means a colorless, odorless gas at standard conditions, having a molecular composition of two oxygen atoms.]

. . .

"Sulfur [Dioxide] **dioxide** (SO_2)" means a colorless gas at standard conditions, having a molecular composition of one sulfur atom and two oxygen atoms.

7:27-9.2 Sulfur content standards

(a)-(b) (No change.)

(c) The provisions of (a) and (b) above shall not apply to fuels whose combustion causes sulfur dioxide emissions from any stack or chimney into the outdoor atmosphere which are demonstrated to the Department as not exceeding, at any time, [hose] **those** quantities of sulfur dioxide expressed in pounds per 1,000,000 British Thermal Units (BTU) gross heat input, set forth in Table 2 of this section.

TABLE 2

MAXIMUM ALLOWABLE SULFUR DIOXIDE EMISSIONS

(No change.)

(e) The provisions of (a), (b), (c), and (d) above shall not apply whenever a person responsible for the sulfur dioxide emissions from a facility into the outdoor air, resulting from the combustion of **facility by-products alone, or from the combustion of** facility by-products combined with fuels conforming with this section, can demonstrate to the Department that the facility's emissions are predictable and will in no case exceed 310 ppm by volume adjusted to 12 percent carbon dioxide by volume. In such cases, the Department may establish conditions as it deems appropriate including, but not limited to, requiring sampling and analysis[,] of emissions of sulfur dioxide, periodic fuel analysis and the periodic submission of data.

(f) (No change.)

7:27-9.4 Waiver of air quality modeling

(a) The Department may waive the air quality simulation modelling requirements of N.J.A.C. 7:27-9.2(d) if the applicant demonstrates that:

1. The effective heights, as determined in accordance with the provisions of (b) below, of the stacks to be included in the mathematical combination are equal, or that the emissions from the fuel having the greatest sulfur content will be discharged to the atmosphere from the stack having the greatest effective height; [and]

2. The total maximum SO_2 emission rate for all source gases to be included in the mathematical combination is no greater than 800 pounds per hour (363 Kg/hr); [and]

3. No stack in the mathematical combination is separated from any other stack **by a distance, measured from the stack** center lines, greater than three times the least effective stack height of any stack included in the mathematical combination; and

4. (No change.)

(b) (No change.)

(c) The effective stack height of a given stack for the purposes of this subchapter is the lesser of the following values:

1. (No change.)

2. The sum of the physical stack height and the plume rise. Plume rise is calculated from the formula:

$$h = [\left(\right] \frac{9.5}{u} \left(\frac{Vd^2(T-68)}{T + 460}\right)^{0.75} [0.75]$$

where:

h is the plume rise in feet;

u is 12 if the physical stack height is less than 65 feet; u is 5 for physical stack heights of 65 feet or greater;

v is the actual exit velocity of the stack gas in feet per second;

d is the inside diameter of the stack exit in feet; and

T is the temperature of the stack gas at the stack exit, in degrees Fahrenheit.

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HEALTH

(a)

HEALTH FACILITIES RATE SETTING

Standard Hospital Accounting and Rate Evaluation (SHARE) Manual

Adopted Amendments: N.J.A.C. 8:31A

Proposed: November 19, 1990 at 22 N.J.R. 3460(a).

Adopted: March 19, 1991 by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: March 22, 1991 as R.1991 d.212, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2H-1 et seq.

Effective Date: April 15, 1991.

Expiration Date: February 20, 1995.

Summary of Public Comments and Agency Responses:

COMMENTER: Cohen, Shapiro, Polisher, Shiekman and Cohen for Bergen Pines County Hospital

COMMENT: (N.J.A.C. 8:31A-2.2) Bergen Pines objects to the proposal to consolidate nursing into the Patient Care Unit (PCU). The hospital believes the SHARE hospitals range from "acute psychiatric services to less intensive physical rehabilitation services." It suggests that the Department re-classify hospitals to enhance the level of homogeneity within Acute Care (ACU) and Sub-Acute classes.

RESPONSE: The amendment does reclassify hospitals. It consolidates nursing costs and statistics into one cost center classification, Patient Care Unit (PCU), but segregates them into two categories (Rehabilitation and Specialized). This enhances the homogeneity, as suggested by the hospital, since only one category existed previously.

COMMENT: (N.J.A.C. 8:31A-2.2) The hospital claims the proposal to consolidate nursing into one cost center may make Bergen Pines' Adult Intermediate and MICA Units ineligible for SHARE reimbursement.

RESPONSE: In accordance with the proposed amendment, the Adult intermediate and MICA Units would be reported in the PCU cost center and be eligible for reimbursement in accordance with SHARE requirements.

COMMENT: (N.J.A.C. 8:31A-2.2) Bergen Pines County Hospital states that if the Department insists upon consolidating nursing into the Patient Care Unit (PCU), it should establish criteria for hospitals to appeal for additional reimbursement upon demonstrating that a more intensive level of nursing service is necessary.

RESPONSE: Appeal procedures currently exist in N.J.A.C. 8:31A to allow hospitals to document the need for additional reimbursement for more intense staffing. However, the Department welcomes any input and/or documentation for the development of an intensity adjustment.

COMMENTER: Children's Specialized Hospital

COMMENT: (N.J.A.C. 8:31A-2.2) Children's Specialized Hospital stated that the proposal to consolidate nursing within the Patient Care Unit (PCU) does not give appropriate recognition to different levels of patient care. The hospital believes the proposed amendment should contain language which would recognize varying levels of inpatient care provided by specialty care hospitals.

RESPONSE: The Department does not believe the amendment will penalize hospitals who claim to have a more intense nurse staffing patient mix, since the use of two categories will result in a more homogenous grouping. However, the Department welcomes any input and/or documentation for the development of an intensity adjustment.

COMMENTER: Fair Oaks Hospital

COMMENTS: Fair Oaks Hospital states that peer comparisons which result from the consolidation of nursing costs into the Patient Care Unit (PCU) must be developed from 1979 data and the results must be brought forward to the current rate year so that any overspending challenge would be adjusted to reflect this change.

RESPONSE: The proposed changes to cost center definitions and eligibility for reimbursement is only for prospective rate years. Prior year rates reflect existing regulations for the years in question.

COMMENTER: New Jersey Hospital Association

COMMENT: The New Jersey Hospital Association (N.J.H.A.) states that several rehabilitation hospitals reported costs and statistics for patients requiring a higher nursing intensity of care in the Acute Care Unit rather than the Sub-Acute Care (SAC) cost center which enabled them to obtain a higher level of reimbursement than the current proposal.

As a means of identifying hospitals with more seriously ill patients and higher costs for treatment, the Association recommends the development of an "Intensity Adjustment" factor which would be added to the rates.

RESPONSE: The Department does not believe the amendment will penalize hospitals who claim to have a more intense nurse staffing patient mix since the use of two categories will result in a more homogenous grouping. However, the Department welcomes any input and/or documentation for the development of an intensity adjustment.

COMMENTER: St. Clares—Riverside Medical Center

COMMENT: St. Clares—Riverside Medical Center stated that the proposal to allow only the Patient Care Unit (PCU) to be reimbursable under SHARE would create per diems based on a nonhomogenous group of patients which require different levels of care.

RESPONSE: The Department believes the use of one cost center, Patient Care Unit (PCU), with two peer categories (Rehabilitation and Specialized) will produce more homogenous groupings for peer comparison of unit costs. However, the Department welcomes any input and/or documentation for the development of an intensity adjustment.

COMMENTER: Kaden Arnone

COMMENT: (N.J.A.C. 8:31A-2.2) The firm of Kaden Arnone stated that if the Patient Care Unit (PCU) is intended to be the only nursing cost center, all references to the Acute Care Unit (ACU) should be deleted.

RESPONSE: The total costs of the facility are reported in the SHARE cost report. The reports may include Chapter 83 total institution costs which appropriately include Acute Care Units (ACU). These are removed from the SHARE rate setting process by a cost allocation methodology.

COMMENT: (N.J.A.C. 8:31A-7.4(a)2iii(3) and (4)) The firm of Kaden Arnone objects to the proposal to limit Malpractice and Utility costs to 150 percent of median unit costs. It cites hospital uniqueness of location, claims experience and plant age. The firm believes the limitations would cause cash flow and reimbursement shortfalls.

RESPONSE: The amendment only intended to insure that projections for interim rates are reasonable. If extraordinary circumstances warrant increases above the limit, hospitals will be permitted to document them. Malpractice and Utility costs will still be adjusted to actual cost in the Final Rate.

COMMENTERS: Children's Specialized Hospital, Fair Oaks Hospital, John F. Kennedy Medical Center, Kennedy Memorial Hospital, NJ Hospital Association, St. Clares—Riverside Medical Center

COMMENT: (N.J.A.C. 8:31A-7.2(a)4ii) Children's Specialized Hospital objects to the proposal to require separate audited financial statements on the grounds that it is an unnecessary expense since audit requirements are being met by representatives of various reimbursement programs or their fiscal intermediary. The hospital suggests that the Department develop procedures for auditors and an acceptable allocation basis.

COMMENT: Fair Oaks Hospital opposes the proposal to require separate financial statements. The hospital states that it is a subsidiary of a parent corporation and as such there is no business reason for it to have audited financial statements prepared since the parent has audited financial statements prepared for the corporation as a whole. It also states that the need for audited financial statements of Fair Oaks Hospital for the SHARE rate setting program is unnecessary since the Department already audits cost reports on a regular basis.

COMMENT: John F. Kennedy Medical Center takes exception to the proposal to require separate financial statements for facilities which are reimbursed under more than one reimbursement system. It states that separate accounting systems are maintained for the Anthony M. Yelencsics Community Hospital and the Johnson Rehabilitation Institute. The respective revenues and expenditures are therefore readily identifiable and a separate opinion would provide no cost benefit.

COMMENT: Kennedy Memorial Hospital objected to the proposal to require separate audited financial statements as impractical and stated it would create additional administrative costs which would be passed on to the SHARE payors.

COMMENT: The New Jersey Hospital Association stated that the Association and representatives from two prominent public accounting firms met with representatives of the Department of Health to discuss the proposed amendment to require separate audited financial statements. The Association states that the Department agreed to withdraw the amendment and form a work group from the Department, N.J.H.A.

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public accounting firms, and hospitals to work out a solution regarding the appropriateness of cost allocations between reimbursement methodologies.

COMMENT: St. Clares-Riverside Medical Center objects to the proposal under N.J.A.C. 8:31A-7.2(a)4ii to require the separation of expenditures and revenue of the SHARE unit on the audited financial statements. The hospital states that this requirement would be costly and questions whether the Department will allow reimbursement for the additional expenses.

RESPONSE: The Department is withdrawing the proposed amendment to N.J.A.C. 8:31A-7.2(a)4.ii, Hospital Rate Review Guidelines, which states: "The audited financial statements shall separate the expenditures and revenues of the SHARE unit when the financial statements contain expenditures and revenues for more than one reimbursement system. The audit of the financial statements shall contain an opinion on the reasonableness of the separation of the SHARE expenditures and revenues."

The Department met with representatives of the New Jersey Hospital Association (NJHA) and agreed to form a work group to develop an alternate proposal.

It should be noted this does not change the existing requirement to submit audited financial statements for the entire institution.

COMMENTER: St. Clares-Riverside Medical Center

COMMENT: (N.J.A.C. 8:31A-5.1) St. Clares-Riverside Medical Center states that the requirement to file annual calendar year financial statements is unreasonable. It suggests that adjustment factors be used for hospitals whose fiscal year is not the calendar year.

RESPONSE: The Department believes that a common reporting period for all hospitals as a basis for peer comparison of costs is a more equitable method. The financial statements are required to verify the calendar year cost reports.

COMMENTERS: Cohen, Shapiro, Polisher, Shiekman and Cohen for Children's Specialized Hospital, Fair Oaks Hospital, Robert Wood Johnson Institute, St. Lawrence Rehabilitation Center, Children's Specialized Hospital, New Jersey Hospital Association

COMMENT: All of the above commenters submitted comments advocating periodic rebasing (relief of Minimum Base Period Challenge) by the SHARE reimbursement system.

RESPONSE: The comments are beyond the scope of the proposal; therefore, a response is not appropriate.

COMMENTER: Kaden Arnone

COMMENT: The firm of Kaden Arnone recommended removal of the Commissioner's ceiling on all Medicare and Medicaid per diems.

RESPONSE: The comments are beyond the scope of the proposal; therefore, a response is not appropriate.

COMMENT: The firm of Kaden Arnone recommended adjustments to the SHARE economic factor proxies for 1990-1991 to put SHARE hospitals on an even basis with Chapter 83 hospitals.

RESPONSE: The comments are beyond the scope of the proposal; therefore, a response is not appropriate.

COMMENTER: New Jersey Hospital Association

COMMENT: The New Jersey Hospital Association supports the proposals to amend N.J.A.C. 8:31A-7.4(a), Methodology for calculating Global Rates, and N.J.A.C. 8:31A-7.10(b), Management increases.

RESPONSE: The Department concurs and thanks the New Jersey Hospital Association for its support on the above proposals.

Full text of the adopted amendment follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

8:31A-1.4 Reserved)

8:31A-2.2 Inpatient cost center definitions

(a) Inpatient cost centers are those that provide daily nursing care to inpatients. The following cost centers, except PCU, are non-eligible for SHARE reimbursement:

1.-3. (No change.)

4. Patient Care Unit (PCU);

5. (No change.)

(b) Uniform reporting of inpatient cost center costs should involve a review of the following special cost considerations:

1. Special cost considerations:

i.-iv. (No change.)

v. Dietary: Include in ACU, PCU and SNF the cost of setup and removal of trays after delivery by dietary. The cost of transportation of food trays to and from the cost centers is included in dietary.

vi.-xiv. (No change.)

2.-5. (No change.)

6. Patient Care Unit (PCU); function:

i. Patient Care Unit provides nursing care to patients on the basis of physicians' orders and approved nursing care plans, and consists of care in which the patients require convalescent and/or restorative services at a level less intense than acute care requirements.

ii. Educate the patient and patient's family on continuing care.

iii. (No change.)

7. (No change.)

8. Inpatient (CIP) cost details:

i. Expenses reported in the CIP inpatient cost centers, namely ACU, ICU, NBN, and PCU, including allocated NAD costs, are to be further classified as to registered nursing service, licensed practical nursing services, nursing attendants and unit clerical services.

ii. (No change.)

9.-12. (No change.)

8:31A-2.4 Ancillary and physicians cost centers

(a) (No change.)

(b) The following special cost considerations should be reviewed with respect to the uniform functional reporting of costs:

1. (No change.)

(c) Ancillary and physician cost center definitions are as follows:

1. Anesthesiology (ANS) definitions and functions:

i.-iii. (No change.)

Recodify 3.-11. as 2.-10. (No change in text.)

11. Other physical medicine and psychology (OPMP); function:

i.-ii. (No change.)

iii. Psychology: Includes non-physician psychological counseling and testing.

Recodify 13.-21. as 12.-20. (No change in text.)

8:31A-5.1 Reporting; generally

(a) (No change.)

1. (No change.)

Recodify 4.-5. as 2.-3. (No change in text.)

4. The filing of annual calendar year financial statements will continue to be required of hospitals.

8:31A-5.2 Overview of forms

(a) Rules concerning overview of forms include the following:

1. Form A summary: Form A summarizes cost and per diems for base year actual costs.

2. B forms, Volumes and statistics; reporting of all budgeted statistics:

i. (No change.)

ii. B-2: Quarterly inpatient utilization summary; B-2A Annual inpatient utilization summary;

iii.-v. (No change.)

3. Form C, Cost Center budgets: These forms (2 pages) indicate hours, salaries and other actual costs less expense recoveries by cost center. Supplementary forms are required as follows:

i. (No change.)

ii. C-2A: Contracted services detailed report;

iii. C-2B: Other expenses detailed report;

Recodify iii.-iv. as iv.-v. (No change in text.)

vi. C-5: Other operating and non-operating income;

vii. C-6: Details on nursing costs.

4. E and F forms, Cost allocations:

i.-ii. (No change.)

iii. Categories of patient care services on these forms and their use are as follows:

(1) Covered inpatient (CIP): Inpatient care services reimbursable by Blue Cross;

(2) (No change.)

(3) Education and research (EDU and RES): Education and research cost as defined by N.J.A.C. 8:31A-2.6(b);

(4) Non-eligible (NON-EL): The cost of all non-eligible patient care services, including clinics and private outpatient per Blue Cross

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instructions. N.J.A.C. 8:31A-2.2(a) is an exception to the Blue Cross instructions. Costs of non-eligible services should be included in cost centers, with the exception of purchased cost of blood and pacemakers.

iv. These forms are as follows:

(1) E-gross patient care revenue;

Recodify (1)-(3) as (2)-(4) (No change in text.)

5. (No change in text.)

6. Form H-1, Employee data: Data regarding certain categories of employees included in cost centers.

7. Form H-2, Summary of medical professional cost component: Summary of all physicians and residents and their costs included in the actual cost report.

8. (No change in text.)

9. Form K, actual adjustments: Form K calculates adjustments to base year approved CIP costs.

10. L forms, Pro forma financial statements: Analysis of revenue, results of operations, financial position and cash flow for operations of the current prior year.

i. (No change.)

ii. L-2: Revenues and expenses and cash flow;

iii.-iv. (No change.)

8:31A-5.3 Listing of forms

(a) The following is a listing of forms involved in reporting:

1. A—Actuals summary;

2. (No change.)

3. B-2A—Annual inpatient utilization summary;

4. (No change.)

5. B-4—Ancillary volumes;

6. (No change.)

7. C—Cost center actual costs;

8. (No change.)

9. C-2—Salary and fringe benefit summary; other expense detailed;

10.-11. (No change.)

12. C-5—Other operating and non-operating income;

13. C-6—Details of nursing costs;

14. E—Patient care gross revenue;

15.-21. (No change.)

22. K—cost adjustments;

23. (No change.)

24. L-2—Revenues and expenses and cash flow;

25.-26. (No change.)

8:31A-5.4 Special instructions for completion of forms

(a) With the exception of E, F and K forms, these instructions merely supplement descriptions and footnotes on the forms in clarifying areas that may present difficulties. Instructions for E, F and form K are more complete.

(b) Rules concerning all forms include:

1.-2. (No change.)

3. Special instructions concerning form A summary are:

i. (No change.)

4. Form B-1, Inpatient volumes:

i. (No change.)

Recodify v.-vi. as ii.-iii. (No change in text.)

5. Form B-2 reports the inpatient volumes and salaries and contracted services by patient care services grouped by SHARE inpatient cost centers. Unlike other SHARE reporting forms, form B-2 should be submitted quarterly.

i. Form B-2A—Definitions of types of beds are as follows:

(1)-(21) (No change.)

6.-7. (No change.)

8. Form B-4, Ancillary Volumes (2 pages):

i. For volumes reported, units should be reported consistently for covered inpatients, emergency room and non-eligible services.

9. (No change.)

10. Form C, Cost center actual costs:

i. All cost centers:

(1) Blue Cross totals (BCT): Enter here the totals of all cost center costs entered on form C.

(2) Reconciling items (RIT): Reconciling items are costs which account for all differences between SHARE cost center totals and the total costs of the institution. Enter the totals from C-4.

(3) Total institution costs (TOT): These totals should represent the total cost of the institution adjusted for RIT.

11. Form C-1, Depreciation and lease costs.

12. Form C-2, Other expenses detailed report.

13. Form C-3, Other cost details.

14. (No change.)

15. Form C-5, Explanation of other operating and non-operating income.

16. Form C-6—Details on nursing costs on inpatient (CIP) and nursing administration (NAD) costs:

17. Form E—Patient care gross revenue.

18. Form E-1, Bases for distributing ancillary costs and statistical units:

i. This form serves two purposes:

(1)-(2) (No change.)

ii.-iv. (No change.)

v. Total direct costs, and so forth: Enter in these columns the respective amounts applicable to each ancillary service. The data for total direct costs and total salaries should be taken from the form C entries. Total salaries include physicians' salaries.

(1) Housekeeping units should be those units which you plan to use on your Blue Cross reports (Square feet, hours, and so forth).

(2)-(4) (No change.)

19.-23. (No change.)

24. Form J—Hospital based physician data.

25. Form K, cost adjustments:

i.-xiii. (No change.)

Recodify 25.-26. as 26.-27. (No change in text.)

28. Form L-2, Revenues, expenses and cash flow:

i. "Operating expenses" reported should agree with amounts reported on form C, page 12, total institution costs, not including expense recoveries.

ii. (No change.)

Recodify 28.-29. as 29.-30. (No change in text.)

8:31A-5.5 Statement of purpose; reporting procedures

(a) (No change.)

(b) By May 31 of each year, all New Jersey Hospitals are required to file the preceding year's actual costs on the SHARE Actual Reporting Forms. The requirements for the cost reporting are detailed in the SHARE Manual and the Financial Elements and Reporting Regulation, N.J.A.C. 8:31B-4 as amended.

(c) (No change.)

SUBCHAPTER 7. RATE REVIEW GUIDELINES

8:31A-7.2 Hospital Rate Review Guidelines

(a) The Commissioner of Health, pursuant to the authority of N.J.S.A. 26:2H-1 et seq. ***and*** N.J.S.A. 17:2H-1 et seq.***,*** and with the approval of Health Care Administration Board, adopts the following rules concerning the rate review for specialized and rehabilitation hospitals.

1.-2. (No change.)

3. Definitions:

In addition to those definitions outlined in N.J.A.C. 8:31A-1.4, the following definitions shall apply:

"Director" means the Director of Health Facilities Rate Setting.

"Analyst" means the Analyst, Health Facilities Rate Setting, to whom an individual hospital's cost submission has been assigned.

. . .

"Final Administrative Rate" means the payment rate developed as a result of acceptance by the hospital of the Global rate, acceptance by the hospital of the Proposed Alternate Rate, acceptance by the hospital of the Administrative Payment Rate, or the rate established following an appeal to the Administrative Law Judge (ALJ) from the administrative rate determination for the methodology for new or non-SHARE base year hospitals, as described in N.J.A.C. 8:31A-7.5 and all subsequent sections.

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"Final Rate" means the payment rate developed from the Final Administrative Rate following the certification of actual costs of providing health care services as reported by hospitals, by making the retroactive adjustments described in N.J.A.C. 8:31A-7.14.

. . .

"Schedules" means the schedules used to calculate rate in accordance with SHARE rules.

. . .

"Level II Appeal" means the appeal held before an Administrative Law Judge (ALJ) in which the hospital or the payors appeal the Administrative Payment Rate based on the Analyst Review (Level I Appeal). The purpose of the Level II appeal is to determine if the Guidelines were properly interpreted and executed by the analyst at the Level I Appeal based on only information and documentation made available at the time of the analyst review.

. . .

4. Times tables:

i. At the request of the Commissioner, hospitals shall furnish to the Department of Health such reports and information as the Department may require to establish reasonable rates for payment by payors for health care services provided by a hospital, excluding confidential communications from patients. The information shall be used to establish inpatient per diem rates according to the following schedule:

Activity	Date in the Rate Year
SHARE Base Year Actual Submission	May 31
Projections for Rate Year	July 31
Volumes and other items as required	
Request for additional Depreciation, Malpractice and interest to be included in the Payment Rates	July 31
Global Rate Established	October 1
Request for Alternate Rate	November 1
Alternate Rate Established	December 15
Form B-2 submitted for Quarter Ending:	
December 31	February 15
March 31	May 15
June 30	August 15
September 30	November 15
Date to submit actual costs on SHARE Forms	May 31
Date to submit Audited Financial Statement for preceding calendar year	May 31

ii. Hospitals shall submit their Base Year Actual Data to the Department no later than May 31 of the following year. *[The audited financial statements shall separate the expenditures and revenues of the SHARE unit when the financial statements contain expenditures and revenues for more than one reimbursement system. The audit of the financial statements shall contain an opinion on the reasonableness of the separation of the SHARE expenditures and revenues.]* Volume projections, documentation of depreciation and interest costs required for the rate year and other information needed to establish reasonable payment rates shall be submitted by July 31. Any errors in the actuals or supplemental information submitted must be corrected within 10 working days of notification of the error. Once the Department has determined that the actual cost submission is suitable for entry into the data base, it shall be so entered, no further substitutions or rearrangement of costs will be accepted unless it is deemed necessary by those performing the detailed, on-site review pursuant to N.J.A.C. 8:31A-7.3.

iii. Hospitals that fail to submit the actual costs in a condition that would render them suitable for entry into the data base by July 31 and/or those that fail to submit volume projections and any other supplemental information in a condition that would render them suitable for entry into the data base by August 15, shall forfeit their right to proceed under the normal methodology for determining a reasonable reimbursement rate. These hospitals shall have their rates calculated according to the following method:

(1) Should the hospital fail to submit its actual costs and/or volume projections, and other required information to the Department in a condition suitable for entry into the data base as stipulated in (1) above, its latest approved rate (Global Rate, Proposed Alternate Rate, Administrative Payment Rate or Final Administrative Rate) increased by one half of the rate year economic factor shall become its Final Administrative Rate. The hospital will not be entitled to an appeal of this rate. The Final Approved Rate will be adjusted for the item specified in N.J.A.C. 8:31A-7.14.

iv. For any hospital proceeding under the normal methodology which has requested an Alternate Rate, a date for the detailed review with the Analyst shall be set within 60 working days of the issuance of the Proposed Alternate Rate. At least 10 working days prior to the date so established the hospital must submit written documentation of all items to be discussed. This documentation will specify each item by cost center, the costs associated with the item, in total institution (unfringed, base year dollars) and the hospital's rationale for the request. Should the hospital fail to submit the documentation in the allotted time or fail to appear on the established date, it shall have forfeited its right to an appeal, and the Proposed Alternate Rate will become the Final Administrative Rate.

(1) (No change.)

(2) Should the hospital pursue an appeal of the Administrative Payment Rate provided for in N.J.A.C. 8:31A-7.13 the hospital may not submit documentation other than that provided to the Analyst unless the hospital can demonstrate the existence of good cause for failure to provide the documentation to the Analyst within the deadlines set forth above.

(3)-(4) (No change.)

v. If a hospital fails to submit its Actual data by May 31 and is unable to justify the delay or non-submission, its per diem will be reduced by five percent effective the first day of each month, until the submission is received by the Department. This reduced rate shall remain in effect until the Actual data has been processed and found suitable for entry into the Actual data base. Once the data is approved for entry into the data base the reduced per diem rate will be retroactively increased to the latest rate approved by the Department. The hospital is allowed to submit corrections and changes to its actual data until the data base is closed on July 31.

8:31A-7.3 Auditing of costs

(a) At a mutually agreed upon time, the Department may perform a detailed on-site review of costs and statistics to verify consistent reporting of data and extraordinary variations in data. The hospital may ask the Department to reconsider its findings, and the Director of Health Facilities Rate Setting will render a decision. This decision may be appealed according to the Administrative appeal process as defined in N.J.A.C. 8:31A-7.13. Nothing in this section modifies in any way, the rights of any third party to conduct its own audit per contract agreement and, for legal requirements.

(b) (No change.)

8:31A-7.4 Methodology for calculating Global Rates

(a) Global Rate will be developed from the hospital's most current prior year Alternate or Global rate as of October 1. Subsequent appeal adjustments granted to a prior year rate after October 1 in accordance with N.J.A.C. 8:31A-7.2, 7.13 or 7.15 will be included in the succeeding year Global Rate or from the Methodology for new or non-SHARE base year hospitals described in N.J.A.C. 8:31A-7.5(c), established pursuant to the SHARE Guidelines. Acceptance of the Global Rate shall constitute a waiver of any Right of Appeal concerning the rate and no adjustments to any prior rate shall affect the Global Rate.

1. (No change.)

2. The adjusted approved Global Rate will be calculated by adjusting the prior year's Alternate or Global Rate in existence on October 1 by the following factors:

i. (No change.)

ii. The reasonable costs for legally required changes made in the prior year that were or were not included in the prior year.

iii. Difference between the approved Global Rate and the projected reasonable costs for:

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(1)-(2) (No change.)

(3) Malpractice, not to exceed 150 percent of median;

(4) Utilities, not to exceed 150 percent of median;

iv.-v. (No change.)

3.-4. (No change.)

5. The hospital's specific adjustments carried out in accordance with (a)1ii above establishes the reasonable increase in costs for management changes in lieu of the management request and approval procedure that existed in previous Rate Review Guidelines.

i. For hospitals having actual costs equal to or less than 95 percent of the median in all three Level I clusters (statewide patient care cluster costs per patient day, statewide general services cluster cost per patient day, and category ancillary cluster costs per admission), the non-physician costs will be increased by three percent.

ii. For hospitals having actual costs equal to or less than the median in all three Level I clusters, the non-physician costs will be increased by two and one quarter percent.

iii. For hospitals having actual costs equal to or less than 105 percent of the median in all three Level I clusters, the non-physician costs will be increased by one and one-half percent.

iv. For all other hospitals, the non-physician costs will not be increased.

v. The physician portion of the hospital's costs will be increased by one-half of the factor applied to the non-physician's portion.

6.-7. (No change.)

8:31A-7.5 Methodology for Alternate Rates

(a) A hospital may request an Alternate Rate based on the SHARE rate review methodology by notifying Health Facilities Rate Setting, New Jersey State Department of Health, CN 360, Trenton, New Jersey 08625, by certified mail on or before November 1. The Department will notify each such hospital of its Proposed Alternate Rate established under the SHARE methodology on or before December 15. The Alternate Rate will be developed in accordance with the process described in (b) below and can be appealed as provided in this subchapter. There is no assurance that the Alternate Rate so developed will be equal to or greater than the Global Rate initially developed. Once the hospital has requested an Alternate Rate, this rate will be established and implemented.

(b) A proposed Alternate Rate will be developed from the following:

1.-2. (No change.)

3. An industry-wide economic factor as described in N.J.A.C. 8:31A-7.9 will be applied globally to actual expenses, adjusted in accordance with (a)1 and 2 above.

4. The hospital will be given an automatic adjustment to its actual costs, adjusted in accordance with (a)1 and 3 above, to provide for management increases in accordance with N.J.A.C. 8:31A-7.10. Should the hospital determine that the allowed increase is insufficient, the hospital will be required to document the need for additional costs. No further adjustment will be allowed until the hospital can justify the need for all the management increases allowed in the total approved costs. Should the hospital attempt to document the need for additional monies for management increase, and/or seek an increase of its covered inpatient costs, except as described in N.J.A.C. 8:31A-7.11, it is at risk for the monies allowed through the automatic adjustment. (For example, a hospital may determine it requires an increase of $100,000 in a particular cost center which has only been given an increase of $30,000 through the normal methodology. That same hospital may have been given an automatic global management increase totaling $250,000. No additional costs will be given in the center requiring the $100,000 adjustment until the need for all of the allowed $200,000 has been explained. Should the hospital substantiate the need for only $200,000 of the automatic adjustment, the remaining $50,000 will be deducted from the approved costs.)

i. Information relating to the documentation of the need for additional monies for legal and/or management changes must be submitted to the Analyst in accordance with the time frame established for the detailed review in accordance with N.J.A.C. 8:31A-7.2(a)4iv. These changes should be specifically identified as a legal and/or management change, item by item in base year dollars and are defined as follows:

(1) Legal: Changes required to implement legislation or other mandates such as: Joint Committee on Accreditation of Hospitals (JCAH), Medical Practice Board, licensing and inspection, certificate of need and Federal and state legislation.

(2) Management: Changes due to management decisions such as personnel and physician, contracted services, and supplies in the rate year.

ii. Any request for additional costs related to legal/management changes approved in the base year alternate rate and not included in the amounts for the automatic adjustments described above will be considered by the Analyst. A presumption of reasonableness of these costs will prevail in those instances where all conditions remain equal.

5.-11. (No change.)

12. The Department may perform a detailed on-site review of costs and statistics to verify consistent reporting of data and extraordinary variations in data. The hospital may ask the Department to reconsider its findings. The decision will be made by the Director of Health Facilities Rate Setting Services and may be appealed according to N.J.A.C. 8:31A-7.13.

13. A hospital's Administrative Payment Rate (APR) will be issued subsequent to the completion of the review with the Analyst. The review will be undertaken in accordance with procedures established by Health Facilities Rate Setting. If the hospital accepts the Administrative Payment Rate, this becomes the Final Administrative Payment Rate.

14. A hospital may appeal its Administrative Payment Rate as outlined in N.J.A.C. 8:31A-7.13.

15. (No change.)

(c) For hospitals which have entered the SHARE system since January 1, 1986 which do not have an "Approved Rate" in accordance with N.J.A.C. 8:31A-72 of the Hospital Rate Review Guidelines, the Alternate rate will be developed from equalized median unit costs from base year actual costs in accordance with Appendix A cost centers, peer groups and units of service; and base year median cost per admission for the Other Physical Medicine and the Education and Research cost centers. Certificate of Need square feet projections will be utilized as the units of service for the Plant and Housekeeping cost centers. Depreciation and lease costs reportable in the Plant cost center will be reimbursed for the covered inpatient portion of Certificate of Need approved costs stated in the Certificate of Need approval letter and application. Interest expense on long-term debt reportable in the Plant cost center will be reimbursed for the covered inpatient portion of Certificate of Need approved costs stated in the Certificate of Need approval letter and application.

1. During the median methodology years an occupancy rate of 80 percent and projected admissions and plant square feet, adjusted for the period of operation in a calendar year, will be applied to the median unit costs to develop covered inpatient costs (CIP) and an approved per diem. Median methodology years will be calculated as follows:

i.-ii. (No change.)

iii. The Year 3 Global Rate will be developed from the Year 2 Alternate Rate, in accordance with N.J.A.C. 8:31A-7.4, if a facility has an initial period of operation of 12 complete calendar months in Year 1. The Year 3 Alternate Rate will be developed in accordance with N.J.A.C. 8:31A-7.6 unless N.J.A.C. 8:31A-7.5(c) applies.

(1) If a facility in Year 1 did not have an initial period of operation of 12 complete calendar months in Year 1, a Year 3 Global Rate will not be developed but a Year 3 Alternate Rate will be developed from Year 2 Approved Covered Inpatient Costs (CIP) adjusted for measured inflation and a management adjustment of two percent.

iv.-v. (No change.)

8:31A-7.10 Management increases

(a) (No change.)

(b) For each hospital, a comparison shall be made of the unit cost of each Level I and Level II cost center to the median cost and adjustments will be made to increase the base year costs as follows:

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Hospital's Unit Cost Is:	Percent Allowance
equal to or greater than the median	0
equal to or greater than 95 percent of the median, but less than the median	2
equal to or greater than 90 percent of the median, but less than 95 percent of the median	4
equal to or greater than 80 percent of the median, but less than 90 percent of the median	6
less than 80 percent of the median	8

1.-2. (No change.)

8:31A-7.11 Reasonableness tests—Education/Physician Coverage

(a) (No change.)

(b) This test will involve calculating the average actual compensation per physician in each cost center, and ranking with categories as defined in N.J.A.C. 8:31A-7.12. Costs will be deemed presumptively reasonable to the extent that they do not exceed 110 percent of category median value.

(c) (No change.)

8:31A-7.13 Appeals concerning the determination of costs

(a) Appeals may be taken by hospitals, their payors and the Division of Rate Counsel, Department of the Public Advocate (under N.J.S.A. 52:27E-18) subsequent to the determination of the Administrative Payment Rate. Such appeals may only be taken if the Administrative Payment Rate resulted from a review with the Analyst or resulted from proceedings in accordance with N.J.A.C. 8:31A-7.2(a)4iii(1). The hearing on the appeal shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) The request for an appeal must be filed with Health Facilities Rate Setting, Department of Health (under N.J.S.A. 52:27E-18) within 30 days following receipt of notification of the Administrative Payment Rate (established in the manner indicated above).

(c) Within 30 days subsequent to the request of an appeal before the Administrative Law Judge, the hospital shall furnish to the Department of Health and the Public Advocate a list of all items to be appealed and the costs associated with those items.

1. As provided in N.J.A.C. 8:31A-7.2(a)4iv, no documentation other than that provided to the Analyst in connection with the detailed review can be presented to the Administrative Law Judge unless the party can establish just cause for failure to provide the documentation earlier. Should any of the parties desire to present any such evidence, it must be sent to the other parties at least 30 days prior to the appeal.

2. (No change.)

(d) After the Administrative Law Judge has filed his or her report, the Commissioner of Health will determine and approve the Final Administrative Rates and the hospital and its payors will be notified in the form of an administrative order over the signature of the Commissioner of Health.

8:31A-7.14 Retroactive adjustments

(a) Since the Global Rate of the alternate Rate will establish costs which are reasonable for establishing Reimbursement Rates, the Final Rate will be adjusted for the following items only:

1.-5. (No change.)

(b) (No change.)

8:31A-7.16 Time-Phased Plans

(a) This provision establishes the procedure to develop a plan by which the hospital eliminates unreasonable costs. The plan will phase out those costs deemed unreasonable based on the SHARE comparisons with peer hospitals (base-period challenges). The hospital had the opportunity to appeal these challenges of unreasonable costs at the detailed review with the Analyst. If the hospital did not justify the reasonableness of these base-period costs (which are based on the actual spending), there exist two alternatives. The first alternative is that the hospital recognizes the costs are unreasonable and submits a plan of action designed to eliminate them. The second alternative is that the hospital pursues an appeal to the Administrative Law Judge and does not submit a plan to reduce unreasonable expenditures.

(b)-(c) (No change.)

(d) Where the above defined actual expenditures are to be reduced, the following procedures shall apply:

1. All Rate Year expenditures that are considered eligible for a time-phase adjustment, per the aforementioned definitions, may be allowed as approved costs. All expenditures incurred prior to the receipt of the Proposed Administrative Payment Rate (APR) will be allowed as approved costs. The hospital will receive this adjustment either in the revised APR or the (FAR) Final Administrative Rate. (For example: A hospital incurs a base period challenge in a cost center in 1983 for which it did not receive a time-phase adjustment in a prior year. If the base period challenge is $100,000 and the hospital receives the APR on June 30, 1983 the time-phase adjustment (per this section) will include 50 percent of the challenged dollars because six months of the year have elapsed. If the same hospital received its APR on August 1, 1983 the time-phase adjustment would include 58 percent of the challenge dollars because seven months of the year elapsed.)

i. (No change.)

ii. If the hospital does not submit a plan or does not appeal to the Administrative Law Judge, then the time-phase adjustment, as described in the example, must include only the expenditures incurred up to the date of the APR. This will be considered its time-phase plan and the approved costs will be included in the hospital's FAR.

2. Following receipt of the Administrative Payment Rate, with respect to eligible base period challenges which the hospital does not intend to appeal to the Administrative Law Judge, the hospital shall submit a detailed plan leading to the elimination of the challenged expenditures within a reasonable period of time. Such plans shall set forth in detail the costs necessarily incurred in eliminating the challenged expenditure within the time period set forth.

3. The Hospital Submits a Plan.

i. The hospital may submit a time-phase plan for any eligible base-period challenge which was discussed with the Analyst at the detailed review. Where a plan is submitted, the following procedures shall apply.

(1) (No change.)

(2) The submission of such a plan by a hospital shall indicate that the hospital does not wish to contest the challenge to a Administrative Law Judge Appeal. The hospital shall submit the plan within 20 working days following receipt of the Administrative Payment Rate.

(3) Health Facilities Rate Setting (HFRS) will make a written recommendation to this plan no later than 15 working days following the receipt of the plan. The hospital shall receive a copy of the recommendation.

(4) If the hospital accepts the recommendation of Health Facilities Rate Setting (HFRS), the Hospital shall notify the Department within 10 working days of the receipt of the recommendation. The recommended plan shall be made a part of the hospital's rate file, appropriate adjustments shall be made to the Administrative Payment Rate and all such expenditures shall be removed from the base for all succeeding years.

(5) (No change.)

(6) If the hospital does not accept the recommendation of Health Facilities Rate Setting (HFRS), the hospital may appeal this decision and shall proceed as under (d)3ii(1) below. The hospital must notify the Department within 10 working days of the receipt of the recommendation that the hospital intends to appeal the decision of the Department to the Administrative Law Judge. No adjustment will be made to the Administrative Payment Rate under these circumstances. Where possible, this appeal will be heard in conjunction with any other appeals scheduled for that hospital under N.J.A.C. 8:31A-7.13.

ii. When an institution appeals the time-phased plan to the Administrative Law Judge pursuant to (d)3i(6) above, the following procedure shall apply:

(1) The Administrative Law Judge shall make a recommendation as to which time-phased plan should be approved (that is, either the hospital's plan as proposed under (d)3i(2) above or the recommendation of Health Facilities Rate Setting as proposed under (d)3i(3)

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above. The approved plan shall be made part of the hospital's rate file, appropriate adjustment shall be made to the payment rate (APR/FAR) and all such expenditures shall be removed from the base for all succeeding years.

4. The Hospital Does Not Submit a Plan:

i. Where a hospital does not submit a time-phased plan for an eligible base period challenge, the following procedures shall apply:

(1) When the Administrative Law Judge recommends that a base period challenge be included in the hospital's budget as reasonable cost, such cost shall be paid and allowed in the Final Administrative Rate (FAR) only upon the waiver by the hospital of all further appeals for that cost center.

(2) Where the Administrative Law Judge sustains the base period challenge, an adjustment shall be made in accordance with (d)1 above, and this adjustment will constitute an approved time-phased plan. The approved costs shall include costs actually incurred up to the date of the hearing, where such appeals involve colorable issues and are taken in good faith. Whenever the Administrative Law Judge shall determine that non-colorable issues have been pursued or the issues were not pursued in good faith, only those expenditures covered in (d)1 above shall be included in the approved costs. This adjustment shall be made to the Final Administrative Rate and all such expenditures shall be removed from the base for all succeeding years.

(3) (No change.)

5. (No change.)

AGENCY NOTE: Appendices A, B and C, which follow N.J.A.C. 8:31A-7 in the New Jersey Administrative Code, should be located at the end of the chapter. This relocation will be effected upon adoption of the amendments proposed herein.

APPENDIX A
Cost Center Record

Function	Cost Center (Abbr.)	Level	Peer Group	Units of Services	Cost Increase Analysis: Reasonableness Limit	Variability Personnel	Factor Supplies
Inpatient Care	PCU	I	Category	PCU Patient Days	1.15	50	100
Outpatient Care	EMR	II	Character	ER Admission	1.1	50	100
Ancillary Service	ANS	III	Statewide	OR Hours & Dels.	—	50	100
	CSS	I	Category	Admissions	1.1	50	100
	DEL	I	Statewide	Del & Gyn Procedures	1.1	50	100
	DIA	III	Statewide	DIA Treatments	—	50	100
	EDG	I	Category	Admissions	1.1	50	100
	LAB	I	Category	Admissions	1.1	50	100
	ORR	I	Category	ORR Hrs. + (.241 × operations)	1.1	50	100
	PHM	I	Category	Patient Days & (3.74 × adm.)	1.1	50	100
	PHT	II	Category	Patient Days	1.3	50	100
	RAD	I	Category	Admissions	1.1	50	100
	RSP	I	Category	Patient Days	1.2	50	100
	CCA	III	Statewide	Procedures	—	50	100
	BBK	II	Statewide	Admissions	1.2	—	100
	OPPM	III	Statewide	Patient Days	1.3	50	—
Physician	PHY	II	Statewide	Fee & Sal. Hrs.	1.1	0	0
	RSD	II	Statewide	Fee & Sal. Hrs.	1.1	0	0
General Services	A&G	I	Category	Patient Days	1.1	0	0
	DTY	I	Statewide	Patient Days**	1.1	50	100
	FIS	I	Category	Admission	1.1	50	100
	HKP	I	Statewide	Sq. Ft.*	1.1	0	0
	MAL	III	Category	Patient Days	1.5	0	0
	MRD	I	Category	Admissions	1.1	50	50
	PCC	II	Category	Admissions	1.1	0	0
	PLT	I	Character	Sq. Ft.*	1.1	0	0
	UTC	III	Statewide	Sq. Ft.*	1.5	0	0
	OGS	II	Character	Patient Days	1.3	0	0
	L&L	I	Statewide	Patient Days	1.1	50	50
Other	EDR	III	Category		1.3	0	0
Fringe Benefits	LFB	—	Statewide	Hours			
	PFB	—	Statewide	Hours			
	PEN	—	Statewide	Hours			
	INT	III	Statewide	Patient Days			
	DEP	III	Statewide	Patient Days			

*Inpatient % for this cost center

**Excluding "In & Out" same day

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APPENDIX B

Abbreviation	Cost Center Description
ACU	Acute Care Unit
ICU	Intensive Care Unit
NBN	Newborn Nursery
PCU	Patient Care Unit
EMR	Emergency Room
ANS	Anesthesia
CSS	Central and Sterile Supply
DEL	Delivery
DIA	Dialysis
EDG	Electrodiagnosis
LAB	Laboratory
ORR	Operating and Recovery Rooms
PHM	Pharmacy
PHT	Physical Therapy
RAD	Radiology
RSP	Respiratory Therapy
CCA	Cardiac Catheterization
BBK	Blood Bank
OPMP	Other Physical Medicine and Psychology
PHY	Physician
RSD	Resident
A&G	Administrative and General
DTY	Dietary
FIS	Fiscal
HKP	Housekeeping
MAL	Malpractice
MRD	Medical Records
PCC	Patient Care Coordination
PLT	Plant
UTC	Utilities
OGS	Other General Services
L&L	Laundry & Linen
EDR	Education
LFB	Legal Fringe Benefits
PFB	Policy Fringe Benefits
PEN	Pension
INT	Interest
DEP	Depreciation

APPENDIX C
(No change.)

SUBCHAPTER 9. INFLATION

8:31A-9.1 Economic factor

(a) The industry-wide economic factor shall be comprised of the percentage changes in the following proxies for their relevant cost components weighted by their percentage of reported costs on SHARE Projected Actuals for all hospitals combined. The factor is determined exclusive of depreciation and facilities interest, lease, and utilities cost.

1. Labor 1:

i. (No change.)

ii. SHARE cost center: All Cost Centers for which employee salaries are reported; contracted services in ACU, ICU, NBN, PCU, SNF, EMR, CLN, and OHS cost centers except RSD; and physicians fees for RSD cost center;

iii.-iv. (No change.)

2.-11. (No change.)

12. Supplies 9:

i. (No change.)

ii. SHARE cost center: Supply costs reported in ACU, ICU, NBN, PCU, SNF, EMR, CLN, OHS, ANS, CSS, DEL, DIA, EDG, NMD, ORR, OPM, PHT, RSP, THR, and CCA cost center;

iii.-iv. (No change.)

13.-19. (No change.)

(b) (No change.)

SUBCHAPTER 10. MISCELLANEOUS

8:31A-10.1 (Reserved)

8:31A-10.4 (Reserved)

(a)

HOSPITAL REIMBURSEMENT

Procedural and Methodological Regulations Reconciliation: Hospitals

Adopted Amendment: N.J.A.C. 8:31B-3.73

Proposed: December 17, 1990 at 22 N.J.R. 3724(a).

Adopted: March 19, 1991 by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: March 22, 1991 as R.1991 d.213, **with a substantive change** not requiring public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b and 26:2H-18d.

Effective Date: April 15, 1991.

Expiration Date: August 17, 1995.

As set forth in the notice of adoption for the amendments to N.J.A.C. 8:31B proposed at 22 N.J.R. 3724(a), published in the March 18, 1991 New Jersey Register at 23 N.J.R. 898(a), the proposed amendment to N.J.A.C. 8:31B-3.73(a)1i was not adopted at that time so that the Department could reconsider the amendment in light of the comments received. This notice of adoption includes the text of the amendment as adopted along with a summary of the public comments on the amendment and the Department's response.

Summary of Public Comments and Agency Responses:

N.J.A.C. 8:31B-3.73 Reconciliation: Hospitals

COMMENTERS:

Barnert Memorial Hospital Center
Bergen Pines County Hospital
Besler and Company
Blue Cross and Blue Shield of New Jersey
Cathedral Healthcare System
Elizabeth General Medical Center
Jersey City Medical Center
Hackensack Medical Center
Kaden Arnone Inc.
Monmouth Medical Center
Morrisy and Company
Newark Beth Israel Medical Center
New Jersey Hospital Association
N.J. Hospital Rate Setting Commission
Our Lady of Lourdes Medical Center
Overlook Hospital
Shore Memorial Hospital
St. Clares Riverside Medical Center
St. Elizabeth Hospital
St. Francis Medical Center (Trenton)
St. Joseph's Hospital and Medical Center
St. Peter's Medical Center
Valley Hospital
West Jersey Health System

COMMENT: Commenters believe that reconciliation to the lower of aggregate charges or approved revenue for the rate year will add to uncompensated care costs, increase the need for cross-subsidization waivers, and put hospitals in noncompetitive positions in both the outpatient and inpatient areas.

RESPONSE: The proposal to reconcile hospitals to the lower of charges or approved revenue was intended to assure that charges accurately reflect approved revenue. When charges are below approved revenue, as has been the case in recent years, the following problems arise:

1. Hospitals experience severe undercollections, especially for outpatient services. Later, these are made up by increasing mark-up factors,

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retrospective rate adjustments, and rate variability for inpatients, shifting costs inappropriately;

2. Medicare and Medicaid revenue are not maximized when outpatient charges are kept low; and

3. Patient appeals increase as discrepancies between charges and DRG rates increase.

The proposed amendment will result in patients paying rates, especially for outpatient services, that as appropriately as possible reflect the costs of their care. If all hospitals raise their charges in response to this rule, no competitive disadvantages will result. Also, the Department agrees that this change could affect the amount of uncompensated care, but it is important that trust fund dollars accurately reflect the cost of the care given, especially in light of the current discussion over financing and uses of the Uncompensated Care Trust Fund dollars.

COMMENT: There were also questions about the calculations to be used in deriving aggregate charges and approved revenue. Commenters asked about terminology and definitions, data comparability, gross revenue NAC (non-acute care) charges, and final reconciliation for this issue. Comparison of inpatient charges to the DRG rate on the uniform bill was mentioned as an inappropriate comparison because the DRG rate does not reflect the hospital's approved revenues since it includes prior year adjustments and Medicare cost-shift mark-ups. In addition, inpatient charges are not comparable to DRG rates, and the UB-82 billing information will provide only inpatient data. Recommendations for changes to the rule as proposed included: use of the UB-82 for inpatient data and the E-form of the Chapter 83 Actuals for outpatient data; determination of approved revenue according to the approved final reconciliation methodology for the year appropriate to the reconciliation; and calculation of approved revenue net of prior year adjustments. A different suggestion was to limit this proposed change to the Inpatient and Outpatient Without Rates categories, or, preferably, delay action pending further study.

RESPONSE: In response to technical comments, the rule has been changed to indicate that the Department will use both UB and cost data. Further clarification will be included in the Final Reconciliation methodology that the Department recommends to the Hospital Rate Setting Commission, when it is proposed for change.

COMMENT: One commenter felt that the 30 days notice was inadequate for hospitals undergoing data system conversions. Another felt the notice was inadequate because of prior year and cash flow adjustments being rolled over into 1991, and requested exceptions for such cases.

RESPONSE: The proposed language concerning closure of the data base has been adopted, to be consistent with the responses to comments regarding N.J.A.C. 8:31B-2.5 and 3.16 (23 N.J.R. 898(a)).

COMMENT: Commenters suggested that cross-subsidization penalty corridors should be widened, and that hospitals be allowed to seek waivers during the current year of operation, not at final reconciliation, as is currently the practice.

RESPONSE: The appropriateness of cross-subsidization penalties and/or their waiver will continue to be addressed under N.J.A.C. 8:31B-3.75(b)2 and 3.43(d) and associated final reconciliation methodology approved by the Hospital Rate Setting Commission, when it is proposed for change.

COMMENT: The issuance date for final reconciliation methodologies was mentioned in the context of this rule by one commenter who said that, since hospitals would be disadvantaged in making radical charge adjustments late in the year, they would need to know final reconciliation methodologies at the start of the rate year.

One commenter supported this proposed change as an incentive for hospitals to set charges in accordance with existing Chapter 83 rules. Another requests that the change include a "reasonable margin for error," perhaps a five percent allowable differential.

RESPONSE: No change is being proposed at this time in the schedule for final reconciliations. The Department encourages commenters to make known their concerns regarding the final reconciliation schedule when it is proposed for change.

COMMENT: It was also requested that the Department develop, with hospitals' assistance, an outpatient allocation methodology for 1992 rate implementation.

RESPONSE: The Department is actively working to develop an outpatient allocation methodology and will seek guidance from hospitals and other interested parties as appropriate.

Full text of the adopted amendment follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

8:31B-3.73 Reconciliation: Hospitals

(a) Following receipt of actual patient specific information pursuant to Rules on Hospital Reporting for Uniform Bill-Patient Summaries (inpatient), as described in N.J.A.C. 8:31B-2, or N.J.A.C. 8:31A-8.1, whichever is appropriate: determination of actual case-mix as determined by the same GROUPER used to establish rates; and calculation of the actual economic factor, the Commissioner shall determine consistent with the Commission's Order, for each hospital, for the calendar year or rate period, whichever is appropriate, reconciliation for:

1. Variable financial elements:

i. Except as specified above, reconciliation for direct patient care costs shall be made on the basis of the approved Schedule of Rates for Diagnosis Related Groups and outpatient visits. Hospitals shall be reconciled to the lower of aggregate charges or approved revenue for the rate year, utilizing the *[UB-82]* ***cost and billing*** data submitted pursuant to N.J.A.C. 8:31B-2.5. The Department shall provide 30 days' notice of its intent to close the data base. This notice shall be given no earlier than the end of the second quarter following the rate year. No additional cases shall be added after the closing of the data base. The Schedule of Rates so developed and approved, adjusted to actual measured economic inflation, shall be multiplied by the hospital's actual case-mix and volume which was necessary and appropriate. Outliers, subject to appropriateness review by an approved utilization review, shall be included in the calculation of reconciliation.

ii.-v. (No change.)

2. Fixed financial elements:

i. Indirect patient care costs: The indirect patient care revenue requirements as initially determined shall remain fixed during the rate period except as modified for actual inflation for those components of indirect costs not included in (a)1ii above. Any under or over collection of indirect patient care revenue from revenue centers which are not volume variable as indicated in N.J.A.C. 8:31B-3.24 shall be compensated by a Schedule of Rates Variance as described below.

ii. Capital costs: Only capital indebtedness incurred before September 1, 1986 (as defined in N.J.A.C. 8:31B-3:27(a)1) is considered a fixed financial element. With the exception of the Capital Facilities Formula Allowance and Major Moveable Equipment, these costs shall be reconciled to actual certified amounts, provided that any increase from the prospective amount approved by the Commissioner to the actual amount is related to Capital Facilities as defined in N.J.A.C. 8:31B-3.42.

3.-5. (No change.)

HUMAN SERVICES

(a)

DIVISION OF ECONOMIC ASSISTANCE

General Assistance Program

Emergency Assistance

Adopted Amendment: N.J.A.C. 10:85-4.6

Proposed: July 16, 1990 at 22 N.J.R. 2078(a).

Adopted: March 5, 1991 by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: March 6, 1991 as R.1991 d.174, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 44:8-111(d).

Effective Date: April 15, 1991;

Operative Date: May 1, 1991.

Expiration Date: December 20, 1994.

Summary of Public Comments and Agency Responses:

The following is a list of commenters:

Harold C. Marine, Borough of Allendale

Betty D. Elder, Allentown Municipal Welfare Department

Helen W. Elliott, Asbury Park Social Services Department

Anne B. Call, Borough of Barrington Municipal Welfare Department

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Harry J. Stone, Mayor of Borough of Barrington
Kenneth J. Leake, Mayor of Berkeley Township
Joseph V. Cara, Administrator for Township of Berkeley Heights
Carolyn J. Sharrock, Borough of Belmar Municipal Welfare Department
Richard Lettiere, Mayor of Township of Bordentown
Diane Goetz Stutesman, Township of Brick Municipal Welfare Department
Francis Smith, Township Council of the Township of Brick
James T. Dowder, Mayor of the Township of Bridgewater
Kay Delles, Borough of Brooklawn Municipal Welfare Department
Ann Saboe, Burlington County Welfare Board
Aaron A. Thompson, Mayor of City of Camden
Everett C. Sparks, Township Committee of Carneys Point Township
Jessee A. Stancliff, Carneys Point Township Municipal Welfare Department
Hermia Lechner, Mayor of Township of Clinton
Loretta Castano, Township Council of the Borough of Closter
Paul C. McDougall, Board of Aldermen of the Town of Dover
Nancy Ernst, Ocean County Municipal Welfare League
Nancy Ernst, Township of Dover Municipal Welfare Department
Julia Farrell, Borough of Dumont Municipal Welfare Department
Cardell Cooper, Mayor of the City of East Orange
Bruce Potter, City of East Orange Municipal Welfare Department
Judith Clauss Blair, Eatontown Municipal Welfare Department
Joan B. Dalton, Edison Municipal Welfare Department
Bernice A. May, Borough of Fair Lawn Municipal Welfare Department
Barbara J. Swindlehurst, Fanwood Local Assistance Board
David Henian, Fort Lee Local Assistance Board
Carl Steinberg, Borough of Freehold Local Assistance Board
Michael Wilson, Mayor of Borough of Freehold
John K. Rafferty, Mayor of Hamilton Township
J. Keith Wilson, Hamilton Township Municipal Welfare Department
Charles Pritchard, Mayor of Township of Hamilton
Eva A. Dicks, Mayor of Borough of Helmetta
Michael A. Hehir, Borough of Highland Park Municipal Welfare Department
Robert P. King, Department of Law, Hoboken
Arlyne J. Rehak, Township of Jackson Municipal Welfare Department
Raul Mattei, Jersey City Municipal Welfare Department
Michael E. Bacon, Jersey City Family Health Center
Debra L. Madensky, Mayor of Township of Lacey
Hannah E. Havens, Lakewood Township Municipal Welfare Department
Hannah E. Havens, Lakewood Township Local Assistance Board
Elizabeth H. Dwarica, Mayor of Borough of Leonia
Joseph C. Strippoli, Mayor of Borough of Lindenwold
Terry Tomasulo, Long Branch Local Assistance Board
Wade Gordon Cooper, Township of Lower Local Assistance Board and Township Council
Ralph G. Engelsman, Mayor of Borough of Madison
William E. Close, on behalf of Mayor Raquet of Township of Mahwah
Margaret A. Cawthra, Township of Mahwah Municipal Welfare Department
Robert F. Munoz, attorney representing the Township of Manalapan
Phillips S. Heathcote, Governing Body for Borough of Manville
Frank W. Long, Mayor of Township of Millburn
Mary Ann S. Allacci, Monmouth County Coalition for the Homeless
Joan L. Boas, Mount Holly Township Council
Susan C. Williams, Township of Mount Holly Municipal Welfare Department
Fern Carter Hyde, Borough of Mountainside Municipal Welfare Department
Faneen Murray-Cieslinski, Mount Laurel Township Council
Charles H. Johnson, Mayor of Township of Mount Olive
Dorothy J. Kruger, Municipal Welfare Association of New Jersey
Alayne M. Shepler, Township of Neptune Township Committee
Karen Highsmith, Newark Municipal Welfare Department
Leonard Bier, City of New Brunswick Local Assistance Board
Richard K. Myers, Mayor of Newton
Barbara Neblett, Borough of North Plainfield Local Assistance Board
Carolyn R. Hague, Mayor of Borough of Oradell
Joseph Lipari, Mayor of City of Passaic
Rosalie DiGiovanni, City of Passaic Municipal Welfare Department
William J. Shanley, Passaic County Welfare Director's Association
Valerie Bullock, Township of Pemberton Municipal Welfare Department
Julia Keller, City of Perth Amboy Municipal Welfare Department
Harold W. Mitchell, Mayor of City of Plainfield
Jan M. Robblee-Bayern, Township of Plainsboro Municipal Welfare Department
Andrew J. Salerno, City Administrator for the City of Pleasantville
Kate Litvack, Mayor of Township of Princeton
Edward Tetelman, Department of the Public Advocate
Dorothy L. Gooditis, Township Clerk for the Township of Raritan
Rosary Sollena, Township of Raritan Municipal Welfare Department
Gail F. Battaglia, Village of Ridgewood Municipal Welfare Department
Kathleen D. Cenicola, Council of the Borough of Ringwood
Marie Cannici, Borough of Ringwood Municipal Welfare Department
Shirley Crinshaw, Borough of Roselle Municipal Welfare Department
Michael J. Mauri, Borough of Roselle Park Municipal Welfare Department
Charles S. Callman, Mayor of Borough of Rumson
Barbara Riepe, Township Council of the Township of Scotch Plains
John A. Camera, Borough of Seaside Heights Municipal Welfare Department
Bettsey Arnold, Council of the Borough of Seaside Heights
Adele Latourette-Halsch, Statewide Emergency Food and Anti-Hunger Network
Mary M. Enyingi, Somerset County Municipal Welfare Directors Association
Michael V. Kerwin, Mayor of Borough of Somerville
Adrianne J. Hanks, Borough of South Bound Brook Municipal Welfare Department
Janet L. Whitman, Mayor of the City of Summit
Stephen M. Manca, Township of Union Municipal Welfare Department
Francis J. Grout, Mayor of Borough of Upper Saddle River
Carmen Pereira, City of Vineland Municipal Welfare Department
Paul J. Shives, Township Administrator for the Township of Wall
Angelo F. Cutillo, Mayor of Borough of Manaque
Donna Ryan, Township of Westampton Municipal Welfare Department
Betty Jane Hunt, Township Clerk for West Amwell Township
Lillian W. Corsi, Town of Westfield Municipal Welfare Department
Alfred A. Reda, Council of the Borough of West Paterson
Gertrude M. Farrell, Municipal Clerk for Township of White
Lenore Stern, Willingboro Township Council
Jennie Armenti, Woodbridge Municipal Welfare Department
Isabel F. McAllister, Borough Clerk for the Borough of Woodstown
Mark P. Fancher, Camden Regional Legal Services, Inc.
Connie M. Pascale, Legal Services of New Jersey
Melville D. Miller, Legal Services of New Jersey
Eleanor Vine, Camden Shelter Coalition
Juan Robles, homeless person
John Terwillinger, Cumberland Family Shelter
Frank Barrett, former resident of a shelter for men
Donna Wrenn, Cumberland Family Shelter
Geraldine Hahnes, concerned citizen
Michael Gaynor, concerned citizen
David Sciarra, Department of the Public Advocate
Cary Winslow, Passaic County Legal Aid Society
Richard Preissler, Bergen County Board of Social Services
Margaret Brand, Hamilton Township Municipal Welfare Department
Clifford Brown, homeless client
Charles Zeller, former homeless client
Joan Driscoll, Elizabeth Coalition to House the Homeless
Karinda Wilson, Community Development for Newark Emergency Services for Families
Leomae Good, Trenton Municipal Welfare Department
Dorothy Argyros, Monmouth Coalition for the Homeless
Marc Snyder, Elizabeth Community Health Law Project
Ronald Mallow, homeless client
Alice Kelsey, Monmouth Coalition for the Homeless

The Department of Human Services held public hearings on September 12, 1990, at sites located in the southern and northern regions of the State, concerning the proposed amendments at N.J.A.C. 10:85-4.6. These proposed amendments were developed in support of the New Jersey Supreme Court's decision in the case of *Floyd Williams et al. v. The Department of Human Services*, 116 N.J. 102 (1989), governing Emergency Assistance (EA) in the General Assistance (GA) program. Notice of the public hearing was published in the September 4, 1990 issue of the New Jersey Register, at 22 N.J.R. 2674(a) and other interested agencies and organizations were separately notified by mail. The hearing officer made no specific recommendations regarding the proposed amendment. In

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addition to the oral and written testimony presented by individuals who attended the public hearings, numerous written comments were submitted separately through September 27, 1990, the expanded New Jersey Register comment period. Comments received included those from the Department of the Public Advocate, Legal Services of New Jersey, county and municipal governmental agencies, client advocacy groups, advocacy groups for the homeless, emergency shelter coalitions, as well as from other concerned citizens.

A large number of the comments received from municipal agencies viewed the proposed amendments as costly in dollars and in human efforts to those charged with its administration. It was the commenters' opinion that the proposed amendments do not address other issues in regard to homelessness, such as the need to increase assistance grants, impose sanctions on MWDs who do not observe current EA regulations, or reduce grant amounts of those clients who are placed in motels/hotels/shelters.

Several commenters, while suggesting clarification in some areas, viewed the proposed amendments positively. It was stated by some commenters that certain imperatives established by the Supreme Court in *Williams*, and endorsed by then acting Commissioner Waldman in his adoption of the Office of Administrative Law decision on remand, were not fully satisfied.

A large number of commenters made generalized statements that were not relevant to the proposed amendments and were clearly beyond the scope of the proposal, such as State participation in GA administrative costs, lack of drug and alcoholic rehabilitation and mental health treatment facilities, and tenant/landlord dispute issues.

Oral and written comments and Department's responses follow:

COMMENT: Six commenters expressed concerns about the mutual agreement provision. It was asserted that the contractual agreement could easily create the same problem as the "fault" provision did. The "fault" provision, the commenters indicated, was used by the agency to deny or terminate assistance. Although the provision provides for participation by the client in the development of the plan, the parties are nevertheless likely to remain in an unequal bargaining position unless safeguards are built into the process. The MWD may impose requirements and conditions which are onerous and, perhaps, impossible for the client to satisfy. It was stated by one commenter that MWDs could use the mutual agreement against the client as a means to terminate them from GA.

RESPONSE: The Department points out that the term mutual agreement has been redesignated to "service plan" to remove strictly contractual connotations that may have been associated with the former term. Text has also been altered in paragraph (c)5 to clarify that continuing EA benefit entitlement is to be based on the client's compliance with established permanent housing search activities to preclude misinterpretation of the provision that may result in inappropriate denials or terminations of EA. In any event, the Department observes that GA eligibility is not predicated on EA eligibility.

COMMENT: Two commenters suggested that county welfare agencies (CWAs) be charged with the responsibility for all Emergency Assistance (EA) functions. Those agencies are better equipped to coordinate the broad range of support services required by the proposed amendments.

RESPONSE: The Department takes note of the comments made. It submits, however, that these are not within the scope of the proposed amendment and cannot be addressed in this rulemaking.

COMMENT: Six commenters expressed concern that the proposed amendments transfer responsibility from the Department of Community Affairs (DCA) to the municipal welfare departments (MWDs). It was stated that DCA should be directly involved in providing funding and housing services to the homeless.

RESPONSE: The issues raised deal with funding and services provided by a separate agency of the State government and cannot be addressed within the purview of these amendments.

COMMENT: Fifteen commenters requested that a more detailed study be undertaken to assess the financial impact of the proposal on the MWDs.

RESPONSE: Inasmuch as the amendments, in essence, reduce existing policy and procedures to administrative regulations in accordance with conditions set forth in the Supreme Court's final decision in *Williams et al. v. Department of Human Services*, a detailed study, as requested by the commenters, will not serve to change the issues at hand.

COMMENT: One commener requested that the rule should be specific as to whether to allow the EA recipient to keep $35.00 or 25 percent from the grant. The proposed amendment is not specific in stating a "minimum of $35.00" or "at least 25 percent".

RESPONSE: The Department has added the necessary clarification to the proposed amendment at subparagraph (e)2iii(3).

COMMENT: Five commenters suggested increasing the monthly GA grant. It was suggested that an amount of $400 be provided for all clients (employable and unemployable). Increasing the grant would help clients to maintain their own housing. A suggestion was made that a better approach would be to significantly increase GA grants to a level that would allow clients to maintain their own housing but retain the existing EA rules to cover situations that are truly emergent in value.

RESPONSE: The Department is acutely aware of the issues around the adequacy of the monthly GA grant standard and efforts to augment grant levels are an ongoing planning activity; however, those issues are clearly beyond the scope of the proposed amendment.

COMMENT: Ten commenters noted that the proposed amendments discriminate against GA clients who are not homeless and must live on just their regular monthly grant, while the homeless are afforded additional benefits. The commenters suggest the rule also discriminates against those minimum wage earners and other individuals who live on fixed incomes and struggle to make ends meet. Concern was expressed that this rule may cause many borderline wage earners to leave employment to make themselves entitled to EA.

RESPONSE: The Department observes that the proposed amendments are specific to EA aspects of the GA program. Any individual who is otherwise eligible for GA and experiences an emergency situation is entitled to GA/EA benefits in accordance with provisions set forth at N.J.A.C. 10:85-4.6.

COMMENT: Two commenters suggested housing EA clients in refurbished military quarters such as Picatinny Arsenal and Fort Dix. Shelter, food, and other services could be provided at a lesser cost than is currently being spent. Employable clients could be put to work on public work projects. This would be a benefit to clients in increasing their self-worth, increasing their job skills, and finding employment in the private sector.

RESPONSE: While the Department takes note of the views expressed, they are not within the specific scope of the subject rulemaking. It is, however, noted that the MWDs may wish to explore other alternatives to address homelessness within the confines of the proposed amendment at N.J.A.C. 10:85-4.6(e)5 concerning MWD initiatives.

COMMENT: One commenter suggested retaining current EA rules but instituting financial sanctions on those municipalities who do not adequately follow the rules.

RESPONSE: The Department observes that the problem identified is clearly beyond the scope of the present rulemaking. The Department notes, however, that the appropriate supervisory mechanisms are in place to compel MWD compliance with established rules and procedures.

COMMENT: Three commenters suggested that housing searches should begin immediately, noting that if the homeless situation is to be resolved, then one has to start immediately.

RESPONSE: Although the proposed permanent housing search provisions indicate that housing search activities are to begin no later than the 11th day after the date the service plan is signed, the Department observes that the proposed amendment allows flexibility to establish an earlier commencement date for such activities, as appropriate.

COMMENT: Two commenters noted that the proposed amendments will place a burden on those communities which have jails, penal institutions, psychiatric and general hospitals, inasmuch as people released from such institutions will seek EA in such municipalities.

RESPONSE: In response the Department observes that the proposed amendment does not alter, increase or decrease the existing burden for those MWDs where such facilities are located.

COMMENT: Four commenters expressed concern with respect to clients with Acquired Immune Deficiency Syndrome (AIDS) and those with Human Immunodeficiency Virus (HIV) Positive. There is an absence of adequate services for these individuals. It was noted that some with AIDS or diagnosed as HIV Positive are employable. Some AIDS and HIV Positive individuals are experiencing difficulty in establishing eligibility for Supplemental Security Income (SSI).

RESPONSE: While it is recognized that efforts must be continued to find viable solutions to address the diversified needs of persons with AIDS and those with HIV Positive, such as getting SSI and obtaining adequate services, the Department submits that such issues are beyond the scope of this proposed amendment.

COMMENT: One commenter suggested reducing the client's grant by a small amount during his or her stay in a motel/hotel/shelter.

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RESPONSE: Although the concept may have some merit in certain EA situations, the Department submits that such a concept would require further review to determine the impact on the client. In any event, a change of this nature would require separate rulemaking activity.

COMMENT: One commenter suggested that the EA client should use his or her monthly grant for food, inasmuch as his or her shelter costs are paid for. Additionally, EA clients should be eligible for food stamps.

RESPONSE: The suggestion of the commenter is already accommodated under existing rules and has no relevance to this rulemaking.

COMMENT: Three commenters were in opposition to the "five working day" timeframe within which to develop a written mutual agreement. Two commenters suggested that the timeframe for preparing the service plan be extended to 10 days and one commenter suggested an extension to 30 days in order to provide time to investigate, plan with other agencies, and provide other services.

RESPONSE: The Department observes that the suggeted extensions for the service plan timeframe will not serve to support the purpose of the emergency shelter program inasmuch as the intent is to ensure that the MWD and the client immediately focus on the necessary steps to address the loss or lack of permanent housing. The Department notes that the service plan is designed to be a multi-stage document subject to alteration based on changing housing needs of the client, client circumstances, and the physical and mental ability of the client to comply with the terms set forth in the plan.

COMMENT: Seven commenters expressed concern with the issue of lack of transportation. The cost of transportation could be substantial in those municipalities where there is virtually no public transportation and payments have to be made for taxi services.

RESPONSE: While it is acknowledged that in some municipalities public transportation is limited and those MWDs would incur a higher expense for alternate transportation services, the Department submits that MWDs are authorized, as a charge to the public assistance trust fund account, to employ the use of, on a case-by-case basis, other innovative means of transportation. In any event, a concerted housing search leading to permanent housing will certainly outweigh the expense that may initially be associated with the provision of transportation for such purposes.

COMMENT: Seven commenters raised issues with respect to the Comprehensive Emergency Assistance System (CEAS). Inasmuch as the MWDs are now responsible and accountable to establish agreements with CEAS, clarification was requested by one commenter as to who has the final say as to the client's eligibility (MWD or CEAS). Two of the commenters noted that at best, CEAS can provide one night's shelter, refer the client to the MWD and expect to be reimbursed. Another suggestion was that CEAS should have the sole responsibility for the coordination of affordable housing and publicizing their toll-free telephone number.

RESPONSE: The commenters' observations are noted. The CEAS as conceived in the subject amendment is viewed as a resource avenue and an interim measure to address immediate housing needs, not as an entity charged with making determinations of eligibility for the local agency. The Department concludes, however, that if the short-term needs are met through CEAS and the client is subsequently found to be GA/EA eligible then reimbursement should be arranged.

COMMENT: Seven commenters suggested deletion of the provisions at N.J.A.C. 10:85-4.6(i) and (j), which require that families with children be temporarily assisted by the MWD. It was asserted that the CWA and the Division of Youth and Family Services are better trained and experienced to deal with children and are supposed to be on call 24 hours.

RESPONSE: The Department notes the comment; however, it observes that the area of concern does not refer to the proposal at hand and considerations to amend or delete those provisions would require separate rulemaking activity.

COMMENT: Two commenters noted that there are no limitations on the number of times in a given calendar year a client can apply and receive EA, thus, clients may be encouraged to go from MWD to MWD when the five months are up and apply for EA rather than be subsidized or continue to cooperate with the first municipality.

RESPONSE: The Department observes that since the "safety net" provisions establish continuing EA benefit entitlement beyond the initial five-month period to those individuals who are GA/EA eligible, such movement by the client from MWD to MWD should not prove to be of any substantial benefit.

COMMENT: Eleven commenters requested a public hearing.

RESPONSE: Those requests were noted and made part of this rulemaking procedure and hearings were held.

COMMENT: Ninety-six commenters were in opposition to the proposed amendments due to the administrative cost/financial burden to the MWDs as well as the taxpayers. The proposed amendments would result in an increase in the work load in order to do everything being required. This could require the hiring of additional staff in order to provide all the required services. The State does not provide for administrative expenses and neither do the rules. The proposed amendments will have a negative impact on a MWD's ability to provide services to the needy. The smaller MWDs have a limited budget to work with and a small staff or in some cases no staff at all. This will negatively affect those MWDs in trying to comply with the proposed amendments.

RESPONSE: The Department submits that MWD staffing needs should not be substantially influenced since the subject amendment merely places programs that are currently operational into rules. Therefore, the impact on staffing needs, as well as the reprogramming of funds currently being spent on servicing homeless recipients has, to a large extent, already taken place.

COMMENT: Four commenters expressed concern that the mutual agreement between the client and MWD will not hold up in court. Clients could claim that they were forced to sign the contract to get assistance; or they may state that they were not mentally alert or capable of knowing what they signed. A suggestion was made that the document be drafted by an attorney, approved by the Board and the local administration.

RESPONSE: The Department has redesignated the term "mutual agreement" to "service plan" throughout the proposed amended text to appropriately reflect the intent of the rule. Language has also been added to the "service plan" text to clarify that the plan of action developed between the client and the MWD is intended to focus on the steps necessary to address those factors dealing with the loss or lack of permanent housing and appropriate permanent housing search activities. In any event, local agency negative actions may be subject to appeal by the client.

COMMENT: Eleven commenters questioned whether the mutual agreement would work at all. The agreement is too vague in terms of client responsibility/cooperation. There is no burden on the client to comply with the agreement. There are no sanctions to make the agreement workable.

RESPONSE: The Department submits that clarifying language has been added at paragraph (c)5 to the subject provision that addresses the commenters' concerns. Refusal, without good cause, to cooperate with the conditions set forth in the service plan that are directly related to the recipient's search for permanent housing or with the initial development of the service plan will render the client ineligible for continuing EA benefits, until such time as cooperation has been resumed.

COMMENT: Twenty-three commenters opposed elimination of the 30-day stipulation for EA eligibility. This encourages homelessness, creates a new program of "temporary rental assistance" and removes client responsibility to make reasonable plans to prevent homelessness. This elimination also signifies that the determination of the responsible jurisdiction is no longer effective. There is nothing to prevent one MWD from "pushing clients" to other MWDs. The rule also encourages persons to come to New Jersey from other states. Elimination of the 30-day requirement for proof of homelessness takes all responsibility away from the client and places it completely in the hands of the MWD.

RESPONSE: In accordance with the Supreme Court decision in *Williams,* EA shelter needs of otherwise GA eligible individuals must be addressed regardless of the cause, or the time period that elapsed prior to the individual coming to the attention of the agency. The Department found that the 30-day rule acted as a disincentive to those clients who attempted to resolve homelessness on their own but were compelled to immediately turn to the MWD for assistance to avoid forfeiting entitlement to EA. With respect to the commenter's statement about "pushing clients to other MWDs," the amendments are essentially in keeping with the statutory provisions that provide for the extension of benefits to otherwise eligible recipients on a "where found basis." The amendments do not add nor do they detract from that statutory provision. With respect to the commenters' statements that the rule "encourages persons to come to New Jersey", it is observed that the amendments neither encourage nor discourage persons from seeking assistance to which they are otherwise entitled. Durational State residence cannot be legally imposed as a prerequisite for public assistance. In any event, the Department is not aware of reliable data to suggest that persons come to New Jersey for the sole purpose of specifically accessing this State's public assistance programs.

COMMENT: Seventy-four commenters were in oppostion and urged that due to the financial burden the proposed amendments will have on

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the MWDs, the rules should not be implemented. A suggestion was made that if the DEA does decide to implement, the effective date should be January 1991 in order to allow municipalities to better plan for the hiring of staff and for the services that will need to be provided. A second suggestion was to delay implementation until July 1, 1991 to coincide with the effective date for the 100 percent reimbursement of State aid. Some commenters felt that even with 100 percent State funding, the financial burden would still be there. Such funding does not cover the administrative costs which will result from the proposed amendments.

RESPONSE: The Department takes cognizance of the suggestions made by the commenters and will strive to provide lead time for phase-in. However, since these amendments essentially codify practices currently in place, it is not anticipated that the phase-in process will present a significant administrative burden. In any event, the Department has opted to adopt an operative date of May 1, 1991 in order to accommodate suggestions of the commenters.

COMMENT: One commenter inquired as to how administrative costs are to be matched beginning on the sixth month of EA.

RESPONSE: There is no departure contemplated under the provisions of the current rulemaking proposal from the administrative cost bearing scheme nor is such deviation possible without legislative activity.

COMMENT: Nine commenters objected to the provision which states that a written notice of termination be provided by the MWD at a face-to-face meeting with the EA client. Since clients are not necessarily stationary nor easily accessible, some cases may not get terminated. This may be placing MWD staff at a personal risk inasmuch as some clients are hostile. MWDs do not have the staff to personally deliver notices. Suggestion was made to retain the current procedure of mailing Form GA-33 to the client. If the client is working, he or she may have to take the time off from work for the face-to-face meeting. Sending termination notices by certiied mail is another possibility.

RESPONSE: The Department concludes that the intent of the face-to-face concept for delivery of EA termination notices is to ensure that the client is made aware of importance of the notice and to explain the impact the action taken will have on his or her EA benefits. Since existing rules provide for regular monthly visits with the client, the Department submits that the EA termination notices can be given to clients at those visits without placing additional burden either on the client or on MWD staff.

COMMENT: One commenter suggested that fair hearing requests be handled at the State level rather than at the local level, if a client requests a hearing after being provided with a termination notice.

RESPONSE: The Department observes that the proposed amendment at N.J.A.C. 10:85-4.6(d)4 does, indeed, provide for this approach.

COMMENT: Nineteen commenters objected to the provision allowing for a letter from the landlord to be used as documentation of a pending eviction. This provides an easy avenue for unscrupulous landlords to join with clients to defraud the GA program. The use of a letter from a landlord can realistically make every client potentially homeless. Landlords can also use this as a means to raise the rent and the MWD will have to pay the higher amount. This is not a legal document, yet binds the MWD to pay the rent and provide services to the client.

RESPONSE: The Department takes cognizance of the objection raised by the commenters with respect to letters from landlords and has revised the proposed text at N.J.A.C. 10:85-4.6(a)3 to subject such letters to verification by the MWD.

COMMENT: Thirty-three commenters stated that one of the main problems being faced is the lack of affordable housing. Commenters noted that affordable housing is not a public assistance issue. Most GA clients are not eligible for Section 8 housing. For those who may qualify for housing, there is a one- to two-year waiting list. One MWD stated that Section 8 housing is only available to those with psychiatric problems who have already been accepted by SSI or SSA disability.

RESPONSE: The Department takes note and subscribes to the need for affordable housing and has joined the DCA in joint leadership task forces to provide initiatives and planning processes to better address this State's homeless problem. It is reiterated, however, that the EA program is designed to meet the short-term EA shelter needs of this most vulnerable population, and it is not a program designed to address low-income housing needs in New Jersey. It is not within the scope of the regulatory authority of this Department to provide a solution to the lack of affordable housing. The measures contemplated by this rulemaking are aimed to underscore the need for coordination and mobilization of efforts to maximize available community affordable housing resources.

COMMENT: Sixteen commenters stated that the responsibility of housing search is being shifted from the client to the MWD. With the proposed amendments, there is no incentive on the part of the client to look for housing. The burden of finding permanent housing needs to be placed on the client.

RESPONSE: The Department observes that housing searches are mutually agreed upon activities and envisions that balanced actions will be undertaken based on the functional capacity of the individual concerned as well as the availability of resources. The requirement, or good cause exemption from the requirement, shall be reduced to writing in the service plan. Continuing eligibility for EA benefits will be based on the client's cooperation to conduct those housing search activities established in the service plan.

COMMENT: Thirty-nine commenters noted that the proposed amendments concerning the shared responsibility to secure shelter arrangements turn the MWDs into "real estate agents." They assert that MWDs do not have staff to secure such arrangements. MWDs will be forced to hire personnel with expertise in real estate law as well as housing and tenancy dispute resolution. Concern was expressed that as realtors, MWDs are exposing themselves to liability litigation should clients abuse the premises or use the premise for illegal activities.

RESPONSE: The Department submits that the shared responsibility in assisting clients is not a unique or a new regulatory development. The requirement to provide the necessary services has been an integral part of the services the MWDs have prided themselves in extending to our less fortuante citizens. Moreover, the statute, N.J.S.A. 44:8-124, addresses the manner in which assistance payments may be made to providers of services and commodities in accordance with the regulations of the Department. N.J.A.C. 10:85-4.3 elaborates that these payments may be made in the form of cash, vendor payments, or a combination thereof. The Department, therefore, concludes that it does not necessarily follow that a greater degree of liability will be assumed by the municipality, as alleged by the commenters, in situations when the MWD provides payment for placement of homeless individuals in permanent housing arrangements because the payment of such shelter emanates from a municipal source. This proposed amendment is merely a redefinition of an existing rule and not a departure from the legislatively authorized pyament mechanism.

COMMENT: Ten commenters stated that the proposed amendment concerning high impacted municipalities discriminates by definition against larger municipalities. This will also lead to a regionalization of homeless population in larger communities where MWDs are already understaff. Suggestions were made to confine the definition of high impact municipalities to be those with a population in excess of 100,000 persons. It was indicated that all municipalities need to serve their clients with the same level of community resource support. Basically, the rule decreases overall agency effectiveness by stretching resources even farther. Creating high impact municipalities creates a two-tier municipal welfare system which is divisive and has the potential to create more problems than it solves.

RESPONSE: The Department does not agree with the observations made, nor will it be in the position to alter the existing proposed amendment in response to such observations at the time of this rulemaking. The Department pionts out that the proposed amendment sets forth a minimal requirement for those MWDs who are defined as "high impact" to establish affiliation agreements with local human service agencies and publicize access to those organizations. It is not the intent of the amendment to exclude any municipality from these affiliation agreements, nor is it the intent to set up a two-tier system, but it is merely to set forth in rulemaking what is already expected in practice.

COMMENT: Sixteen commenters noted that a major problem that needs to be addressed is the lack of drug and alcohol rehabilitation facilities, lack of services for those diagnosed as having AIDS or being HIV Positive, and not enough mental health treatment facilities. Drug rehabilitation programs have a minimal waiting list of six months. People with mental or physical disabilities, therefore, may not be able to be placed or receive the necessary care required under the rule for substantial periods of time. Suggestions were made that participation in drug and/or alcohol rehabilitation programs be mandatory.

RESPONSE: While the Department agrees with the commenters that there are limited treatment facilities for vulnerable recipients, it is not within the scope of this proposed amendment to address the availability of such facilities. In response to the suggestion that participation in certain rehabilitation programs to treat substance addiction be mandatory, the Department notes that shelter is an essential benefit as identified in the *Williams* decision, and eligibility for such shelter cannot be predicated on participation in such programs.

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COMMENT: Three commenters expressed concern that the proposed amendment will result in an increase in the number of fair hearing requests. Some clients may not agree with the MWD's strategy for accomplishing shelter searches or accepting necessary services. This will result in more time being spent in local hearings and appeals, and thus, less MWD time will be available to provide the needed services.

RESPONSE: The Department believes that since the service plan text at paragraph (a)5 has been altered to clarify that the only requirement for continuing EA benefit entitlement is cooperation to conduct housing search activities as established in the plan, fair hearing activity should not be substantially increased.

COMMENT: Thirty-eight commenters stressed how little incentive there is for client participation. The rule only serves to further perpetuate client dependency on the welfare system to such a degree that it is likely that many wage earners will leave employment to make themselves entitled to emergency shelter. The commenters urged that there should be some kind of sanction for client noncooperation or lack of participation.

RESPONSE: The Department observes that the aim of the rule is to provide innovative intervention services to reduce dependency with the proviso, in accordance with *Williams*, that a safety net shelter program must be maintained as long as there is basic GA/EA eligibility and the client participates in housing searches. The proposed amendment does, however, provide for sanctions for as long as the client's noncooperation persists.

COMMENT: Four commenters stated that the proposed amendments have gone beyond the decision by the New Jersey Supreme Court *(Floyd Williams, et al v. Department of Human Services)*.

RESPONSE: The Supreme Court's final decision in *Williams* mandated that rulemaking activity must be initiated to set forth in regulation EA "safety net" programs, currently operational, as well as specific MWD responsibilities for the administration of those programs. The Department observes accordingly that the proposed amendment is in keeping with that decision.

COMMENT: Six commenters suggested that the proposed amendment not be adopted pending a review by the General Assistance Advisory Committee (GAAC).

RESPONSE: The Department observes that municipal welfare directors were part of the GA/EA working group involved with the drafting of the GA/EA proposal language and were given ample opportunity to comment on the amendments as published at 22 N.J.R. 2078(a). Since the GA/EA working group drew some of its membership from the GAAC, there does not seem to be an overriding need for review by that advisory body.

COMMENT: Two commenters were in favor of the proposed amendment. The amendment is seen as a positive step to address the problem of the homeless. Support was voiced for the concept of "service plans" for clients. It was stated that such plans will provide for a basic understanding between the client and the agency as to what the client's needs are.

RESPONSE: The Department takes note of the positive observations made.

COMMENT: Five commenters raised concerns about the additional requirements placed on the municipalities under the State imposed budget cap. All of the State mandates and the five percent cap have already created financial hardships. It is difficult enough for the municipality to meet the new cap requirements with rising costs that are higher than five percent without the added burden of providing aid to the homeless.

RESPONSE: The Department takes note of the observation but submits that funds appropriated by the MWD to provide its share of GA expenditures are exempt from the five percent cap on increases in the municipal tax levy. While it is true that administrative costs for GA are subject to the five percent cap, the Department does not anticipate that the proposed rule will impose an additional financial burden on the MWDs. Municipalities are already providing many of the services associated with the prevention of homelessness.

COMMENT: One commenter requested that, at N.J.A.C. 10:85-4.6(a), "temporary" be defined.

RESPONSE: The Department observes that the concept of "temporary rental assistance" is specifically delineated at N.J.A.C. 10:85-4.6(e)2.

COMMENT: One commenter suggested that language be added at N.J.A.C. 10:85-4.6(a)3 concerning the verification of previous rent amounts and/or even the preexistence of a lease. Without such documentation this can lead to fraud on the part of the landlord and client.

RESPONSE: The Department takes note of the comment but submits that the statement does not have applicability to the referenced section which deals with verification of an impending eviction rather than with evidence of prior rental amounts or preexisting leases.

COMMENT: One commenter questioned as to whether at N.J.A.C. 10:85-4.6(a)3 the rule is reverting to the issue of "recurring income."

RESPONSE: The Department observes that the proposed amendment at N.J.A.C. 10:85-4.6(a)3 does not deal with issues of "recurring income" but is exclusively devoted to text dealing with matters relative to evictions and the securing of documentation from the lessor or other individuals providing housing.

COMMENT: Four commenters questioned as to how a person can be considered homeless under N.J.A.C. 10:85-4.6(a)3iii(2) by simply demonstrating that available funds are exhausted in payment of ordinary and necessary expenses. It was questioned whether people become homeless because they have paid their rent and have no additional sums of money. Concerns were expressed about those who are on a fixed income, such as Social Security, or Supplemental Security Income.

RESPONSE: The Department submits that the comments are focused on the interpretation and application of existing regulations and do not address themselves to the proposed amendments. In any event, EA program eligibility is predicated on an individual's eligibility for GA.

COMMENT: Two commenters requested that the DEA provide and distribute a standardized sample form document as provided for at N.J.A.C. 10:85-4.6(a)3iii(2).

RESPONSE: The Department will take the comment into consideration with a view to future development of such a sample form. The Department observes, however, that the proposed amendment at N.J.A.C. 10:85-4.6(a)3iii(2) provides for a flexible approach, including the possibility to provide demonstration of the exhaustion of available funds by means other than a written statement.

COMMENT: One commenter inquired as to whether the State was going to provide more monies to fund the programs stated at N.J.A.C. 10:85-4.6(b) in order for the MWDs to better avail themselves of such services.

RESPONSE: The Department submits that the proposed rule is intended for certain MWDs to access the services that are available for GA recipients in existing programs. The Department, however, does not expect any new funds to be provided for those programs at this time.

COMMENT: One commenter suggested that N.J.A.C. 10:85-4.6(c) be amended to state that the shared responsibility should also be that of the State of New Jersey to resolve the emergency situation.

RESPONSE: The Department observes that it is understood that it is the Legislature's intent that the program be administered through the local agency with State supervision.

COMMENT: One commenter requested that a more precise definition is needed of "ultimately maintain without EA" at N.J.A.C. 10:85-4.6(c).

RESPONSE: The Department observes that the language seems clear. It is intended to mean that the client and the MWD have shared obligations to locate a shelter arrangement which the client will be able to maintain without the granting of EA benefits.

COMMENT: Three commenters noted that the DEA should develop and distribute a standardized copy of the client's rights and responsibilities for reproduction. One of the commenters suggested that the requirement should be added at N.J.A.C. 10:85-4.6(c)3.

RESPONSE: The Department agrees and will follow through accordingly (see subparagraph (c)3i, added upon adoption).

COMMENT: One commenter inquired as to what individualized plan of action, at N.J.A.C. 10:85-4.6(c)5, would the DEA recommend for clients who although not meeting the definition of disability as set by Social Security, do provide medical documentation that precludes them from working.

RESPONSE: The Department observes that the disability issue presented by the commenter does not focus on the proposed regulatory text, but rather refers to a case management approach in the development of the service plan. The proposed text, however, does provide that medical and social circumstances are to be taken into consideration when determining appropriate housing search activities within the service plan.

COMMENT: Five commenters suggested that the DEA should provide sample copies of the "mutual agreement" form and a client responsiblity form for documenting housing search activities efforts.

RESPONSE: The commenters' suggestions will be considered with a view to future development and transmission of such forms.

COMMENT: One commenter suggested revising N.J.A.C. 10:85-4.6(c)6iii(2)(B) by adding "if potential housing units are available" and to document when this occurs.

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RESPONSE: The Department observes that proposed text of the amendment at N.J.A.C. 10:85-4.6(c)6iii(2)(B) clearly provides language to that effect.

COMMENT: Two commenters noted that at N.J.A.C. 10:85-4.6(c)6iii(2)(C) contacts made by telephone are difficult to verify.

RESPONSE: The Department observes that the commenter does not specify the reasons for the difficulty in verifying telephone contacts. The Department, however, notes that proposed language at N.J.A.C. 10:85-4.5(c)6iii(2)(C) does specifically identify the information the client is to provide to document his or her housing search activities, inclusive of the telephone number (if applicable) and the name of the person contacted.

COMMENT: One commenter wanted clarification as to what constitutes reasonable transportation needs as stated at N.J.A.C. 10:85-4.6(c)6iii(3).

RESPONSE: In light of the comment, the Department has modified the proposed amendment to define the term "reasonable" at N.J.A.C. 10:85-4.6(c)6iii(3) to mean the least expensive mode of transportation that can be provided to accomplish the activity or meet the need identified.

COMMENT: One commenter inquired as to what consequences there are for clients who refuse to comply with N.J.A.C. 10:85-4.6(c)6iii(4) and (5) concerning referral to other services and involvement in a training or rehabilitation program.

RESPONSE: The Department has clarified text of the proposed amendment at paragraph (c)5 to specify that a sanction will be imposed only when the client refuses to participate in the development of the service plan or when the client does not cooperate with the terms of the service plan directly related to securing permanent housing.

COMMENT: One commenter requested clarification as to whether the monitoring of EA client's compliance with the agreement as well as documenting the MWD support activities at least once a month (N.J.A.C. 10:85-4.6(c)6iv) is to be entered in the case record or on a special form to be provided by the DEA.

RESPONSE: The Department does not intend to provide a specialized form for such documentation. In any event, the Department submits that any documentation relevant to requirements set forth in regulation, regardless of how such documentation is received or recorded, is to be made a matter of record.

COMMENT: One commenter requested clarification at N.J.A.C. 10:85-4.6(d)4i. If a client's EA benefits are terminated, then not only the EA benefits but the GA grant should be terminated as well, and should not be continued until a fair hearing is held.

RESPONSE: The Department observes that the proposed text at N.J.A.C. 10:85-4.6(d)4i clearly states that if an EA termination notice is received and appealed by the client, EA benefits shall continue until a fair hearing is held and a decision is rendered by the Director of DEA. GA eligibility, however, is not predicated on EA eligibility.

COMMENT: One commenter noted that the shared responsibility among governmental/non-governmental entities at municipal, county and State levels (N.J.A.C. 10:85-4.6(e)) will not work unless the DEA takes steps to effectuate this shared responsibility by getting the various entities to buy-into the program.

RESPONSE: The Department agrees and will continue to take all possible steps to help coordinate program resources.

COMMENT: One commenter requested that AIDS and HIV Positive with symptoms be defined at N.J.A.C. 10:85-4.6(e)1i.

RESPONSE: The Department observes that current text adding the proposed amendment "unable to perform activities of daily living" provides sufficient clarification for the practical application of the rule.

COMMENT: One commenter opposes the deletion of the current text at N.J.A.C. 10:85-4.6(b)1iv. The commenter's agency uses its locally developed form for the client to complete in making the required 10 contracts.

RESPONSE: As part of this proposal, text at N.J.A.C. 10:85-4.6(b)1iv has been rephrased and positioned at N.J.A.C. 10:85-4.6(c)6iii(2) as a part of the service plan. The Department submits that the agency may continue to use its form as long as the form is used for general information purposes and does not conflict with the provisions for such housing search activities within the service plan.

COMMENT: One commenter requested clarification at N.J.A.C. 10:85-4.6(e)1vii(1) and (2) as to who determines incapacity.

RESPONSE: The Department observes that the comment refers to text proposed for deletion; therefore, further clarification is not needed.

COMMENT: One commenter noted that a client can readily manipulate availability of permanent housing to extend EA under the provisions of N.J.A.C. 10:85-4.6(e)1vii(2).

RESPONSE: The Department observes that the comment refers to text proposed for deletion; therefore, further clarification is not needed.

COMMENT: One commenter noted that N.J.A.C. 10:85-4.6(e)2 (rental assistance) does not speak to tenant disputes nor to client sanctions where a lease exists.

RESPONSE: The Department observes that the commenter's statements go beyond the scope of the proposal. The situations noted by the commenter normally do not result in a state of homelessness.

COMMENT: Four commenters expressed concern about the provision of assistance to those who are underemployed (with recurring income) at N.J.A.C. 10:85-4.6(e)2i. Suggestion was made that "underemployment" needs to be defined.

RESPONSE: The Department will take the commenter's suggestion under consideration for future rulemaking in this area.

COMMENT: One commenter stated that the provision at N.J.A.C. 10:85-4.6(e)2iii(3) would involve more work and expense in issuing extra checks (that is, a $35.00 check to the client, the balance of the grant check to the landlord, and the rental assistance check to the landlord).

RESPONSE: The Department submits that although the temporary rental assistance provision may involve "split payments," it is not a unique approach for GA since the statute itself provides for a variety of "split payment" approaches for assistance payments.

COMMENT: One commenter suggested that the provision at N.J.A.C. 10:85-4.6(e)2iii(4) should not require DEA approval of temporary rental assistance in amounts in excess of $200.00.

RESPONSE: The Department observes that such requirements must be in place to provide for EA cost control and fiscal accountability.

COMMENT: A client advocacy group commends the Department on what it views are very positive changes; the commenter is impressed with the temporary rental assistance provisions and other services which help clients build their future.

RESPONSE: The Department takes note of the positive comment.

COMMENT: Two commenters suggested that N.J.A.C. 10:85-4.6(c) should be amended to state that sanctions which result in the loss of shelter for failure to comply with non-shelter obligations of the agreement must be extremely limited or proscribed.

RESPONSE: The Department submits that proposed language has been altered to clarify that sanctions for noncompliance, without good cause, will be applicable only to housing search activity responsibilities established in the service plan. Such imposed sanction shall cotinue for as long as the client's noncompliance in this area persists. The proposed amendment does, in any event, provide for client appeal rights in EA terminations and for continued EA benefits until a fair hearing decision is rendered by the DEA director.

COMMENT: Three commenters observed that the State must monitor MWDs to ensure that implementation of the proposed amendments are followed by the MWDs in a fair and just manner.

RESPONSE: The Department agrees. Such monitoring is carried out through the Department's ongoing responsibility for the supervision of the local agencies.

COMMENT: One commenter indicated that the proposed amendment is a positive move by the DEA to make GA more responsive and reduce unnecessarily awkward requirements. Making plans to actually resolve the causes of the homeless status is a move in the right direction.

RESPONSE: The Department agrees with the observation in support of the proposed amendment.

COMMENT: One commenter points out that any termination of EA should be followed by an automatic referral for a hearing.

RESPONSE: The Department submits that such automatic referrals would circumvent the client's right to elect whether or not to request a hearing as set forth in N.J.A.C. 10:85-4.6(d)4 and 7.1.

COMMENT: Several commenters expressed concerns with the temporary rental assistance provision at N.J.A.C. 10:85-4.6(e)2 that allows the recipient to retain 25 percent of his or her GA monthly grant amount, or a minimum of $35.00. It was stated that that amount is too low and is inadequate for the needs of any adult in today's society.

RESPONSE: The Department concludes that the amounts identified for retention by the client must be viewed in relationship to the basic GA benefit level structure and in the context of other personal needs amounts identified for similar situations throughout N.J.A.C. 10:85.

COMMENT: While the proposed amendment at N.J.A.C. 10:85-4.6(c)6 requiring "face-to-face" meeting is viewed positively, its purpose will be frustrated unless transportation and other necessary support services are made available to the client. The client's failure to meet with the MWD with respect to the agreement will not only result in his or her inability to provide input about the agreement, but the MWD

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might also use non-appearance as a basis for alleging noncooperation. Contacts cannot occur if the client is without access to or provided transportation.

RESPONSE: The Department observes that the overall concern of the commenter is addressed in regulatory language. In any case, transportation may not be a need, since "face-to-face" meetings may be held at sites other than the agency location.

COMMENT: The proposed amendment at N.J.A.C. 10:85-4.6(a)3 which requires a letter from the landlord to prove a pending eviction presents a problem. In some municipalities, the local officials have required that the tenant present a judgement for possession. Past experience has shown that tenants are unlikely to regain possession after a judgement has been entered, unless the landlord is cooperative. In some cases tenants may present a summons and complaint only to have them rejected as proof. There is a need for a process or mechanism that will allow for effective monitoring of practices and interpretations of regulations by local officials. Providing additional examples of acceptable proof of a pending eviction may be helpful.

RESPONSE: The Department observes that the proposed amendment was intended to add another example of acceptable documentation to preclude any overly restrictive interpretation of the provision. It should be noted that the monitoring of local agency practices or interpretations of rules is an ongoing Departmental supervisory activity. Furthermore, the currently regulated fair hearing process also provides a way to monitor and subsequently correct any inappropriate local agency actions.

COMMENT: Six commenters expressed concerns that training and supervision are not adequately addressed in the proposed amendment. It was indicated that staff of the MWDs are not informed and/or aware of what they can and should do. Incorrect decisions made locally may occur as a result of lack of knowledge of program procedures/rules rather than bad faith. Correct information and timely training should be available to those officials who attempt to perform their jobs in a satisfactory manner.

RESPONSE: The Department indicates that a provision as subsection (m) has been added to ensure that appropriate MWD staff will periodically receive EA training. In response to the concern about supervision, the Department submits that supervisory responsibilities are addressed throughout N.J.A.C. 10:85 and must be viewed in the context of the entire GA program and not solely with respect to each program segment.

COMMENT: The amount allowed for furniture, clothing, appliances, and so forth, in the proposed amendment, in almost every case is inadequate. These amounts require revision.

RESPONSE: The Department takes note of the comment; however, it observes that such considerations will require further review and therefore cannot be included as part of this rulemaking.

COMMENT: The mutual agreement may be problematic. Individuals on the street will sign anything. Clients may then be penalized later if they do not follow through with the agreement.

RESPONSE: The Department indicates that adopted text in this area confines client compliance to permanent housing search requirements with built-in protective measures to prevent abuse in the application of the provision.

COMMENT: Several commenters have indicated that some municipal welfare directors are either not available after office hours or not available at all.

RESPONSE: The Department notes that the comment is beyond the scope of this proposed amendment. The current rule at N.J.A.C. 10:85-2.2(f), however, sets forth responsibilities of the local assistance board (LAB) to designate the hours of operation for the MWD office during the five-day work week and to institute additional arrangements to ensure that persons in need of assistance are served without delay at times other than the normal office hours.

COMMENT: With reference to rental assistance, one commenter indicated that landlords are not getting the money they are supposed to get.

RESPONSE: Inasmuch as the commenter does not explain the reason landlords are not receiving appropriate payments when rental assistance is provided, the Department is not in a position to respond.

COMMENT: It was suggested that a building in the city be converted into a shelter for homeless men. One of the shelters for men is in such a remote area that it makes it difficult for the men to have access to places of employment.

RESPONSE: The Department takes note of the comment and submits that although the suggestion may have merit, the issue is beyond the scope of this rulemaking.

COMMENT: Homeless men in a shelter should be allowed to bank their GA grant.

RESPONSE: The Department observes that although the comment does not refer to the subject rulemaking, current rules do provide GA recipients with a resource exclusion for savings of up to three times the amount of their monthly allowance standard.

COMMENT: Homeless men at shelters should be provided with counseling.

RESPONSE: The Department observes that existing EA rules include counseling as a service that may be provided to EA recipients.

COMMENT: A commenter indicated that client services were denied by a MWD because of lack of a permanent residence.

RESPONSE: The Department observes that the particular incident cited seems to indicate inappropriate application of the rule, not a defect in the rule itself.

COMMENT: Some shelters for men are being closed or simply turning men away when beds are full.

RESPONSE: The Department acknowledges that the lack of available shelter resources is an ongoing concern and recognizes that governmental efforts must continue to find alternate resources to address the homeless shelter issue.

COMMENT: There is concern for the number of homeless in the streets.

RESPONSE: The Department takes note of the comment and submits that concentrated efforts to address homelessness will continue to be a priority.

COMMENT: The proposed amendment to GA/EA which addresses a client's "lack of realistic capacity to plan for substitute housing" should be applied to all GA recipients in Bergen Coutny as room and/or apartment rental costs substantially exceed the grant provided.

RESPONSE: The Department observes that the provision does apply to all GA recipients who face pending eviction or foreclosure because of "lack of realistic capacity to plan for substitute housing" since such individuals may then be potentially entitled to GA/EA.

COMMENT: The proposed amendment does not address long-term housing needs or rental assistance which is necessary to effectuate a long-term solution to securing permanent shelter.

RESPONSE: The Department notes that the GA/EA program is an emergency program and not a program designed to address long-term low-income housing needs in New Jersey.

COMMENT: Nineteen commenters stated that the rules place the onus on the local GA officials to solve the homeless problem. The rules do not take into consideration the underlying causes of the problem, nor do they supply the planning and funding necessary to alleviate the homeless crisis.

RESPONSE: The Department recognizes that the homeless problem in New Jersey is an issue that cannot be exclusively resolved by any one governmental agency and observes that the proposed amendment is not intended to place unnecessary burdens on local agencies. The proposed amendment, however, is intended to ensure that the initial and continuing EA shelter needs of those eligible GA individuals served by the local agencies are met and to delineate MWD responsibilities for those needs in regulation. Although the underlying causes that perpetuate homelessness are social service issues that are clearly beyond the scope of the proposed amendment, such issues are taken into consideration to the extent possible. They are, however, not identified as determining factors for GA/EA benefit entitlement. In any event, the Department has set up a DCA/DHS task force on homelessness to reinforce joint policies, program initiatives and planning processes in an effort to coordinate inter/intra-departmental services for the homeless.

COMMENT: Two commenters indicated that the $200.00 per month temporary rental assistance to supplement the EA recipient's GA grant is insufficient and should be increased.

RESPONSE: The Department observes that the temporary rental assistance provision does provide MWDs sufficient flexibility to increase such assistance amounts, on a case-by-case basis, with DEA approval.

COMMENT: Two commenters stated that the GA/EA rules need to be clearly defined and be applied, fairly and equitably, to all clients.

RESPONSE: The Department submits that the proposed amendment is designed to reinforce the existing GA/EA program by adding "safety net" provisions to equitably address the initial and continuing EA housing needs of individuals who are otherwise GA eligible.

COMMENT: The EA rules should reward positive client efforts and penalize negative actions.

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RESPONSE: The proposed amendment does address client responsibility and imposition of sanctions. Continued EA entitlement, for example, is based on the client's cooperation to mutually develop a service plan and his or her participation in appropriate housing search activities.

COMMENT: Consideration needs to be given to the establishment of additional transitional housing units for homeless and de-institutionalized individuals.

RESPONSE: The Department takes note of the comment.

COMMENT: Restrictive and exclusionary zoning practices which limit access to affordable housing for the homeless should be subject to change by a State approved regional planning authority.

RESPONSE: The Department recognizes the comment; however, it observes that the issue is not within the purview of this rulemaking process.

COMMENT: Homelessness is a societal problem which cannot be resolved by the welfare system.

RESPONSE: The Department takes note of the comment and submits that the GA/EA program is not designed to exclusively address the low-income housing needs of New Jersey's homeless population.

COMMENT: The proposed amendment was not representative of the GA/EA working group recommendations.

RESPONSE: The Department submits that the proposed amendment was drafted in accordance with the Supreme Court decision in *Williams* . The Department observes, however, that while certain editorial changes were made to the draft, the recommendations of the GA/EA working group are represented, to a large extent, unchanged in those amendments.

COMMENT: The MWD is often between a "rock and a hard place," that is, trying to satisfy both the Department's DEA and the Public Advocate's Office.

RESPONSE: The Department takes note of the comment.

COMMENT: State funding for GA administration needs to be increased.

RESPONSE: The Department submits that the State is prohibited by statute from participating in GA administrative costs.

COMMENT: Many clients are not capable of understanding what is expected of them from the mutual agreement.

RESPONSE: The Department recognizes the relative ability of some clients and observes that the rule accents the service role of the MWD in that area.

COMMENT: The mutual agreement is too vague and may result in clients being sanctioned unfairly.

RESPONSE: The Department takes cognizance of the comment and has clarified the rule in this area.

COMMENT: The rules do not provide for sanctions against MWDs, only clients.

RESPONSE: The Department agrees that this rulemaking does not provide for specific sanctions on MWDs. The Department submits that MWD compliance with GA program rules, inclusive of EA, is within the purview of the administrative supervisory responsibility of its DEA and is not the subject of this rulemaking.

COMMENT: The field representatives should be able to sanction the MWDs.

RESPONSE: The Department observes that the comment is not relevant to this rulemaking.

COMMENT: Clients are not being informed about rental subsidies by the MWD.

RESPONSE: The Department observes that the proposed amendment at N.J.A.C. 10:85-4.6(c) and (e) addresses MWD obligation in this benefit area.

COMMENT: Clients applying for assistance often had a long waiting period prior to being provided a grant or were determined ineligible under jurisdictional rejection rules.

RESPONSE: The Department concludes that the commenter draws attention to an issue that is not the subject of this rulemaking but would be a matter for supervisory review and activity.

COMMENT: The elimination of the 30 calendar day eligibility requirement in the proposed amendment is viewed as a positive step in providing client assistance. The commenter supports the proposed amendment that requires an individualized plan of action (mutual agreement) based on the client's physical, mental and functional abilities. The commenter also supports the provision that temporary rental asssistance supplements the client's monthly grant.

RESPONSE: The Department notes the positive observations.

COMMENT: The commenter indicates that he would like to have a job but is having difficulties with the social services system.

RESPONSE: The Department makes note of the comment, but submits that the comment does not lend itself to the current rulemaking.

COMMENT: Two commenters stated that MWDs should investigate the housing standards of the shelter arrangements that are being provided to clients. One commenter stated that housing is not checked by the MWD prior to being offered and was most often substandard. The other commenter suggested that N.J.A.C. 10:85-4.6(e)2 should be revised to specify that the MWD must ensure that housing is safe, decent, and habitable before approving rental assistance.

RESPONSE: The Department concludes that since it is not a distinct responsibility of the MWD to investigate whether a shelter arrangement meets particular housing standards, the proposed amendment will not be altered to include the commenters' suggested revision. It should be noted, however, the rule is designed to recognize the needs of the client and directs the MWD to align the placement with the appropriate shelter arrangement.

COMMENT: Existing EA rules for recipients of SSI should be amended to be aligned with the proposed GA/EA rules. Additionally, the Department's DEA should expand EA regulations to cover recipients of Social Security Disability.

RESPONSE: The Department recognizes the need to update EA regulations for SSI recipients; however, that undertaking is not part of the subject rulemaking.

COMMENT: The DHS is commended for developing a post-EA program that makes significant strides towards meeting the needs of this State's homeless GA population.

RESPONSE: The positive comment is noted.

COMMENT: The proposed amendment represents substantial progress in the fight against homelessness.

RESPONSE: The positive comment is noted.

COMMENT: Two commenters stated that the proposed amendment does not contain a clear statement of the goal of the EA program that accurately reflects the statutory mandate of New Jersey's Supreme Court decision in *Floyd Williams et al., v. Department of Human Services*. The proposed amendment should clearly indicate that it is the fundamental obligation of the DHS and MWDs to make every necessary effort to shelter all eligible GA recipients for as long as their need for shelter exists.

RESPONSE: The Department observes that the goal of the GA/EA shelter program in the proposed amendment has been modified in subsection (c) to emphasize that the initial and continuing emergency shelter needs of otherwise eligible GA recipients will be met.

COMMENT: The proposed amendment at N.J.A.C. 10:85-4.6(c)5 should provide that a recipient can be terminated for refusing to cooperate with a housing related condition only where such refusal is willful or deliberate.

RESPONSE: The Department submits that such an amendment would constitute a substantial change and cannot be addressed with this rulemaking. The Department will, however, consider the comment for future rulemaking activity.

COMMENT: The GA recipient should be given a written warning notice before any action is taken by the MWD to terminate EA. A warning notice can serve as a corrective measure and avoid time-consuing and disruptive termination procedures.

RESPONSE: The Department submits that such a notice process would constitute a substantial departure not only from the text of the subject proposal, but also from the customary due process notice scheme.

COMMENT: GA/EA recipients must have access to the fair hearing process in order to challenge the reasonableness of any requirements incorporated into the mutual agreement that impact upon his or her continued eligibility for shelter assistance. N.J.A.C. 10:85-4.6(d) should be broadened to include not just actions to deny or terminate EA, but also any action taken, or decision made, by the MWD which adversely affects the recipient's receipt of EA and post-EA benefits.

RESPONSE: The Department disagrees and submits that regulatory text, as written, provides, with sufficient clarity, the right of the recipient to appeal any local agency action or inaction which may adversely affect the receipt or ultimate receipt of any benefits including EA. The Department further submits that since the areas of the agreement which the client is mandated to pursue will be limited to housing searches, impact on the client will be minimized.

COMMENT: Two commenters stated that the proposed amendments fail to address what will happen to recipients who continue to need rental assistance at the expiration of the 12-month period. To address this issue, a two-step approach is recommended. First, the proposed text at N.J.A.C. 10:85-4.6(e)2 should be amended to permit extensions of rental assistance

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for three or six months for those recipients who are still unable to afford the rent. Second, the DHS should commence data collection to determine the length of time that would be appropriate for the receipt of temporary rental assistance by GA/EA recipients. N.J.A.C. 10:85-4.6(e)2 should also be amended to require MWDs to promptly and expeditiously process requests for rental assistance.

RESPONSE: The Department will take the comment into consideration in order to determine further rulemaking, if any, that may have to take place for the subject situations. In any event, a rule expansion beyond 12 months would be a substantial change from the announced amendment and would necessitate a separate rulemaking. The Department, however, has modified text at N.J.A.C. 10:85-4.6(e)2 to state that authorized temporary rental assistance benefits shall be expedited by the MWD to preclude the loss of an existing or potential housing arrangement.

COMMENT: High impact municipalities should be required to prepare and submit to the DHS an annual plan describing the manner in which the agency (MWDs) will serve the homeless.

RESPONSE: The Department concludes that an imposition of such a requirement is not contemplated by the text of the proposal and ascribes to the municipalities a total responsibility for the homeless which is not, and cannot be, the purpose and function of rules aimed to serve a GA eligible population.

COMMENT: Two commenters stated that the DHS must continue and intensify efforts to develop a comprehensive homeless strategy designed to create permanent housing opportunities for GA recipients. Recommendation is made that a coordinated working group consisting of representatives of the MWDs, DCA, DHS officials, nonprofit organizations, and homeless advocates be convened to develop innovative ways to house the homeless on a more permanent basis.

RESPONSE: The comment as presented certainly has merit; however, this is not the purpose of the rulemaking at hand. In any event, these initiatives are being coordinated through an inter-departmental task force on homelessness.

COMMENT: The definition of the goal of the GA/EA program should be moved from N.J.A.C. 10:85-4.6(e) to (c). This subsection should be rewritten to state that the goal of the GA/EA shelter program is to provide for the initial and continuing emergency shelter needs of otherwise eligible GA recipients until such time as they secure permanent housing.

RESPONSE: The Department has changed and relocated appropriate text of the proposed amendment to reflect the commenter's concerns.

COMMENT: N.J.A.C. 10:85-4.6(c)3 should be revised to require caseworkers to advise the EA recipient that shelter arrangements will be available for at least five months, and that no recipient who continues to be homeless will be without shelter so long as the recipient complies with the responsibility to search for alternate housing.

RESPONSE: The Department points out that the proposed text includes sufficiently explicit language that will ensure that the recipient will be made aware of his or her EA rights and responsibilities.

COMMENT: N.J.A.C. 10:85-4.6(c)6iii(3) should be amended to require all MWDs, or, at a minimum, the 12 high impact MWDs, to submit formal, written plans identifying the resources they will make available to ensure that GA/EA clients receive transportation assistance (for example, vans, bus, taxi fare) and detailing how the client will gain access to these resources. These plans should be updated annually to reflect accommodations in transportation assistance based on varying numbers and needs of recipients.

RESPONSE: The Department does not agree with the suggestion that specific plans be submitted to address community resources with respect to transportation as exclusive items of service. The Department points to the general requirement as set forth at N.J.A.C. 10:85-4.6(1) and does not believe that any particular municipality, or group of municipalities, should be subjected to a more comprehensively restrictive administrative requirement.

COMMENT: N.J.A.C. 10:85-4.6(c)6iii(3)(E) should be amended to provide transportation for recipients to attend not just counselling sessions but "any medical appointments."

RESPONSE: The Department submits that transportation for medical care purposes, in general, is an allowance provided for under existing GA rules and does not need to be delineated solely for EA situations.

COMMENT: Although not part of the proposed amendment, the termination notice needs to be revised. The notice should advise recipients of the availability of monthly extensions of EA benefits and inform them of their eligibility. The notice should be specific in defining and describing the post five-month extension process so that recipients are aware of the options available to them.

RESPONSE: The Department will take the comment into consideration and will review the viability of the suggestion.

COMMENT: N.J.A.C. 10:85-4.6(e)2ii(1) should be amended to provide that whenever an MWD can demonstrate that an available apartment or room is a more appropriate and cost-effective placement than paying to keep the recipient in a hotel, the MWD shall be authorized to issue a rent subsidy. Accordingly, a provision should be added which authorizes MWDs to provide rental assistance when the MWD determines that an available permanent housing arrangement is in the recipient's best interest and is more cost-effective than a temporary motel or hotel placement.

RESPONSE: The Department agrees with the concept and observes that the proposed text addresses the issue with sufficient clarity.

COMMENT: The last sentence at N.J.A.C. 10:85-4.6(e)2iii(3) should be amended to provide that the recipient shall, as a condition of eligibility for temporary housing assistance, cooperate in making application for other benefits, with the assistance of the MWD.

RESPONSE: The Department observes that the proposal contains the verbatim text of the commenter's suggested language.

COMMENT: The Public Advocate supports the efforts of the DHS to encourage MWDs to seek out and implement more creative solutions to the shelter needs of the homeless population. In order for this to be effective, the DHS must provide MWDs with a financial incentive. There must be more hands-on assistance from the DHS in terms of technical advise and consulting. The DHS must help MWDs focus on their existing resources and the areas that need additional attention by requiring MWDs to inventory existing shelter resources and submit these inventories and plans to expand existing resources to the DHS for review.

RESPONSE: The Department takes cognizance of the comment and will review the suggestion for technology transfer of successful programs which have merit.

COMMENT: The proposed amendments fail to measure up to the mandates of the statute and New Jersey's Supreme Court decision and must, therefore, be significantly amended to meet these requirements.

RESPONSE: Inasmuch as the commenter fails to indicate, with specificity, as to how the proposed amendments fail to measure up to statutory mandates and the New Jersey Supreme Court decision, the Department is not in a position to respond. The Department points out, however, that it is its belief that this rulemaking does comply with such mandates and the decision.

COMMENT: Policy and legal imperatives require that emergency shelter be provided to all that need it and do not choose to be homeless. It should never be State policy to push people out on the street as a sanction—as punishment—for not complying with some particular obligation that it has placed on the client, unless that person has willfully and deliberately refused to comply with appropriate requirements.

RESPONSE: The Department notes the observation and, in conjunction with comments provided elsewhere, has undertaken clarification of text within the confines of non-substantial changes to the subject proposal.

COMMENT: Three commenters stated that State requirements imposed as a condition to receiving emergency shelter must be directly related to and be within the ability of the particular homeless person to meet. "Directly related" refers to those concepts which shall utlimately result in the EA recipient obtaining permanent housing. A client cannot be required to do something beyond his or her control or power. This means that mental, physical, educational and other limitations must be taken into account. A person with a chemical dependency cannot be denied emergency shelter for failure to attend a drug rehabilitation program.

RESPONSE: The Department agrees and the text of the proposal has been modified accordingly at N.J.A.C. 10:85-4.6(c)5.

COMMENT: Two commenters stated that the process of developing and maintaining a mutual agreement must not be allowed to become in itself an impediment to the provision of necessary emergency shelter. A one-month period should be allowed for the development of the mutual agreement and EA should be made available to all, under presumptive eligibility.

RESPONSE: The Department observes that the development and maintenance of the service plan is intended to focus, at the outset, the MWD and the client on the steps necessary to address the EA situation so as not to impede the provision of EA. The Department submits that requirements for presumptive eligibility equally apply to GA as well as GA/EA.

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COMMENT: The Department should provide for, or arrange for, the provision of any services or programs necessary to enable an individual to meet the required conditions, including transportation for all services.

RESPONSE: The Department observes that the amendment does provide for enhanced services to enable the recipient to meet planned activities.

COMMENT: Sanctions imposed for willful failure to comply with appropriate requirements must cease as soon as the willful noncompliance ceases.

RESPONSE: The Department agrees with the exception of the commenter's language making use of the term "willful." The Department notes that the "cure" for noncompliance with EA requirements is already embodied in the adopted text.

COMMENT: The Department should continue to intensify efforts to direct funds toward the least expensive and most permanent housing available consistent with the requirements of adequacy, safety and sanitation.

RESPONSE: The Department notes the observation.

COMMENT: Two commenters stated that the imposition of any sanctions for noncooperation with the mutual agreement should only be applied for willful refusal without good cause, and only after a series of warning conferences, evaluations and related efforts. It was stated by one of the commenters that the REACH program provides the most appropriate model for mutual agreements. Self-sufficiency, dignity and self-respect are its guiding principle. As a result, sanctions can only be imposed for willful refusal to cooperate with the REACH Agreement and only after an extended series of notices, warnings, conferences, and assessments. Any penalties that are assessed end as soon as the individual returns to compliance. Homeless GA recipients receiving emergency shelter assistance must be accorded at least as much respect, consideration, understanding, and protection as people in REACH.

RESPONSE: The Department notes the comment and observes that text has been partially amended in paragraph (c)5 to state that sanctions will be lifted as soon as the individual complies.

COMMENT: N.J.A.C. 10:85-4.6(c)6iv should be supplemented to make it clear that a client's EA benefit cannot be terminated or modified unless the MWD can demonstrate that it has complied with its obligations under the mutual agreement.

RESPONSE: The Department observes that the text of the proposed amendment contains language for MWD activity documentation. Monitoring of such MWD activity is subject to ongoing administrative supervisory review.

COMMENT: N.J.A.C. 10:85-4.6(c)5 should state that: 1) Willful refusal without good cause to cooperate to a significant extent with one or more provisions in the mutual agreements plan which are directly related to securing permanent housing or with the development of such an agreement may render a client ineligible for continuing EA benefits, pending detailed follow up procedures; 2) No period of ineligibility may commence within 30 days of an authorization date for EA; 3) A refusal may not be deemed willful if it is caused by or is symptomatic of the client's disability or other condition; 4) A refusal may not be deemed willful if a client is incapable of meeting a requirement contained in the agreement; and 5) Sanctions can only be imposed if unexcused willful noncooperation of the following steps which are designed to encourage and enable the non-cooperating client to resume or begin cooperation:

(a) Personal service on the client of a written notice detailing the indicated noncompliance to include a warning to the client of possible sanctions for continued noncooperation.

(b) One or more face-to-face conferences between the client and the case manager to review circumstances of noncooperation, unless the client refuses to comply with two or more requests for such a conference (which shall not in itself be grounds for imposing a sanction).

(c) A specific finding by a case manager, reviewed and affirmed by a supervisor or MWD that a client continually refuses to cooperate to a significant extent without good cause with the development or terms of a valid mutual agreement.

RESPONSE: The Department observes that the concept stated by the commenter are already embodied in the proposed text and are now included as modifications in the adopted material. The concepts in items "1, 3, and 4" are covered at N.J.A.C. 10:85-4.6(c)5 and (c)6 setting forth provisions for "good cause" when situations directly related to the recipient's search for permanent housing exist. Wtih respect to item "2", the comment cannot be totally accepted inasmuch as GA/EA is predicated on eligibility for the basic GA program itself, subject to the notice requirements set forth at N.J.A.C 10:85-7. As to item "5", text has now been altered to provide at N.J.A.C 10:85-4.6(c)5 that ineligibility for EA benefits will continue until such time as cooperation is resumed. The commenter's recommendation to institute a pre-warning process incident to the potential imposition of the noncooperation sanction prior to issuance of written notice is not accepted as an administratively viable approach.

COMMENT: N.J.A.C. 10:85-4.6(c)6i should state that a client shall be provided three business days to review the mutual agreement with an attorney or other advisor before signing or agreeing to the terms of the agreement. Also the address of the nearest legal services shall be provided to the client.

RESPONSE: Inasmuch as the term "mutual agreement" has been redesignated as a "service plan" to remove strictly contractual connotations that may have been associated with the former term, the Department submits that the need for a pre-review by an attorney or other advisor prior to the individual agreeing or affixing his or her signature to the service plan is lessened. Current rules, regardless of the GA program eligibility area involved, do not, however, negate any such second party review if a review is deemed appropriate and desired by the person. In order to provide the client three business days to have a service plan additionally reviewed, the time frame for the development of the plan would, of necessity, have to be extended. The commenter's pre-agreement review approach would thus negatively impact on the overall goal of the program aimed to immediately assist the client to resolve the emergency and work toward securing and ultimately maintaining a permanent housing arrangement without EA. As to the suggestion of furnishing the address of the nearest legal services agency, rules at N.J.A.C. 10:85-4.6(1) do already provide for such referral as part of the general case management stipulation relative to the receipt of GA/EA benefits.

COMMENT: N.J.A.C. 10:85-4.6(a)3 and 3ii should be clarified to state that a letter or other type of notice from the shelter provider other than a landlord should be sufficient to trigger the EA eligibility provision. The term "official" is vague and should be deleted.

RESPONSE: The Department submits that text has been modified to remove the term "official" and to include language similar to that suggested by the commenter.

COMMENT: N.J.A.C. 10:85-4.6(a)3iii(2) should clearly state that the "written certification" procedure is an alternative to demonstration where expenses are concerned, and that the salient requirement is exhaustion of resources in the payment of necessary expenses, whether ordinary or not. Additionally,the term "ordinary" as applied to expenditures is subject to being misapplied or miscontrued. As such, a client for GA/EA who demonstrates that available funds were expended for necessities and/or signs a document certifying that claim, should not be required to produce receipts to substantiate his or her actions.

RESPONSE: The Department agrees and has modified text at N.J.A.C 10:85-4.6(a)3iii(2) as suggested by the commenter. In addition, the Department at its own initiative has included "unreimbursed medical expenses" to illustrate another necessary expense having the potential to create homelessness.

COMMENT: N.J.A.C. 10:85-4.6(d) should be modified and repositioned to make it clear that the specified appeal procedures are applicable to all aspects of the EA program. Clients should be able to appeal not only denials or terminations but also MWD decisions to modify or refuse to modify the form or substance of EA benefits.

RESPONSE: The Department does not concur that the repositioning of N.J.A.C. 10:85-4.6(d) or modification as urged will enhance the applicability of the text since appeal procedures, as set forth in N.J.A.C 10:85-7, are equally applicable to entitlement situations governing EA benefits.

COMMENT: N.J.A.C. 10:85-4.6(d) concerning termination of EA benefits needs modification. Clients receiving notices terminating their GA benefits for GAEP or other work-related violations are often not advised that they will lose their EA shelter assistance as well. The rule should explicitly state that such notification must be expressly provided.

RESPONSE: The Department observes that the instant amendment does provide explicit language for the initiation of EA termination notices to clients at N.J.A.C. 10:85-4.6(d). The Department submits, therefore, that since EA entitlement is predicated on GA eligibility, EA clients who receive a notice terminating their GA benefits will also be entitled to receive a separate EA termination notice.

COMMENT: N.J.A.C. 10:85-4.6(d)4 should require MWDs to provide transportation for the client to get to the fair hearing site. Provision of emergency fair hearings at the State level frequently requires travel to Trenton or Newark. Clients generally lack the financial resources to obtain transportation to these locations.

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RESPONSE: While the Department recognizes the possible need to regulate a transportation requirement, such an amendment is not the province of this proposal but must be accomplished through a separate rulemaking process governing access to State level hearings as provided at N.J.A.C. 10:85-7.4 through 7.6.

COMMENT: Establishment at N.J.A.C. 10:85-4.6(d)4ii concerning the time limits for requesting an appeal should be relaxed and appeals allowed where the client's physical, mental, or emotional condition prevents him or her from acting within the stated period, or for other good cause. Troubled clients, for myriad reasons, will frequently deny or fail to grasp the import of termination notices. These clients may be out in the street before they receive the assistance or muster the strength needed to press an appeal.

RESPONSE: The Department does not concur in inserting the suggested language at N.J.A.C. 10:85-4.6(d)4ii inasmuch as this would, in essence, constitute a substantial departure from the instant amendment and require a separate and more comprehensive rulemaking. Such alterations impacting the fair hearing process may need to be specifically reviewed and developed in conjunction with the Office of Administrative Law.

COMMENT: N.J.A.C. 10:85-4.6(d)4 should also be amended to state that any expression of objection or disagreement by a client regarding a termination or denial should be treated by the MWD as a hearing request. Many EA recipients may not understand or be able to express in precise terms their request for a fair hearing.

RESPONSE: The Department observes that to amend the rule as suggested by the commenter would infringe on the client's right to choose whether or not to request a fair hearing.

COMMENT: N.J.A.C. 10:85-4.6(d)4i should be amended to state that when a fair hearing is requested because of receipt of an EA termination notice, EA shall continue "unaltered" until the fair hearing is held and a final decision is rendered by the Director of DEA.

RESPONSE: The Department agrees and has undertaken the modification of text at N.J.A.C. 10:85-4.6(d)4i as suggested.

COMMENT: Two commenters stated that N.J.A.C. 10:85-4.6(e)1v should be amended to provide a six-month period of continuing eligibility for security deposits and related payments in those instances where people find entry-level employment and thus become ineligible for GA. Such individuals would find it extremely difficult to relocate to permanent housing from emergency shelters as they would not have accumulated funds necessary to pay security, utility deposits, moving expenses and other related costs.

RESPONSE: The Department concludes that since EA benefit entitlements are contingent on the individual(s) continuing GA eligibility, the commenters' suggestion cannot be accommodated.

COMMENT: N.J.A.C. 10:85-4.6(e)2iii(5) should be modified to provide transitional assistance for individuals who find entry-level employment, and to provide extended rental assistance benefits for individuals unable to locate affordable shelter within one year. Where a GA/EA recipient is able to work, he or she should be encouraged to do so. Since entry-level employment is, at least initially, very low-paying, an individual receiving a rent subsidy therefore risks a return to homelessness should he or she opt to take such a position. Only by allowing the subsidy to continue for a specified period of time can this possibility be avoided, and return to the workforce must be most effectively encouraged. Additionally, there may be individuals, who despite their best efforts and the best efforts of all concerned, are unable to locate long-term, affordable permanent housing before the subsidy-year expires. SSI and SSD applicants whose ability to obtain permanent housing depends upon receipt of such benefits may not have hearings scheduled on their claims for nearly 18 months, despite their obvious and documented impairments. Consequently, the "safety-net" should be flexible enough to allow the continuation of rent subsidy in such deserving cases.

RESPONSE: The Department notes the commenter's observation; however, it submits that the suggested concept would require further deliberate review. In any event, such a substantial alteration would necessitate separate rulemaking.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from the proposal indicated in brackets with asterisks *[thus]*).

10:85-4.6 Emergency assistance

(a) Emergency assistance (EA), as delineated in the following rules, provides for the prevention of homelessness, the granting of emergency shelter assistance and temporary rental assistance. EA shall be authorized to or for an individual(s) otherwise eligible to receive General Assistance under the rules in this manual when circumstances set forth in (a)1-3 below exist.

1.-2. (No change.)

3. Where there is *[official]* documentation***, subject to MWD verification,*** of a pending eviction, such as a letter from the landlord ***or other person who is providing shelter or dwelling space to the client***, a tenancy complaint filed by the landlord, an order from a court for eviction or foreclosure, an actual eviction or foreclosure has occurred, or when prior *[permanent]* shelter is no longer available, and the eligible individual(s) demonstrates a lack of realistic capacity to plan for substitute housing as defined in (a)3iii below, emergency assistance shall be authorized in accordance with (a)3i and ii below.

i. (No change.)

ii. In situations of homelessness due to actual eviction or foreclosure or when prior *[permanent]* shelter is no longer available, payment shall be authorized for emergency shelter in accordance with (e)1 below.

iii. Lack of realistic capacity: Lack of realistic capacity to plan for substitute housing exists in the following circumstances:

(1) (No change.)

(2) When the eligible person(s) can demonstrate *[and]* ***or*** signs a document, prepared by the MWD, certifying that available funds were exhausted in payment of *[ordinary and]* necessary household and living expenses, such as food, clothing***,*** *[and]* shelter, ***or unreimbursed medical expenses,*** and that payment of such expenses resulted in homelessness.

(3) When the eligible person(s) demonstrates functional incapacity (see (e)1 below) that would prevent him or her to plan for a secure substitute housing.

(b) High impact municipalities, defined as those municipalities with a population in excess of 75,000 people or whose percentage of the population receiving GA is greater than the State average, shall have responsibility to establish affiliation agreements with local human service agencies for shelter and other services, including those agencies affiliated with the Comprehensive Emergency Assistance System (CEAS). High impact municipalities shall utilize the available EA resources and services offered through such affiliations to meet specific needs of EA clients. These municipalities shall also have responsibility for publicizing the CEAS toll free, 24-hour, hotline telephone number.

(c) ***The goal of the GA/EA shelter program is to provide for the initial and continuing emergency shelter needs of otherwise eligible GA recipients. EA is designed to provide shelter and to coordinate support services, with client participation, at all levels of government and with other appropriate sectors of the human services delivery community. It is acknowledged that there is a shared responsibility among governmental/non-governmental entities at the municipal, county, and State levels.*** The MWD and client shall have a shared obligation to resolve the emergency situation and to secure a shelter arrangement which he or she will be able to ultimately maintain without EA. Upon contact with the EA eligible individual, the MWD shall have responsibility to:

1. Immediately authorize appropriate EA benefits to alleviate the emergency situation;

2. Review the circumstances which contribute to the client's homeless situation and limit his or her ability to secure and/or maintain permanent housing (for example, substance abuse, mental illness, insufficient funds);

3. Explain to the client, as well as provide a written copy of, EA rights and responsibilities*[;]***:*

i. EA rights and responsibilities shall be in a form transmitted to the MWDs by the DEA;

4. Discuss with the EA client the emergency shelter arrangement which the MWD determines, in accordance with (c)2 above, will meet his or her immediate emergency shelter needs;

5. Explain that a written *[mutual agreement]* ***service plan*** shall be ***mutually*** developed, within five working days of the EA authorization date, to provide an individualized plan of action aimed at working toward ***securing permanent shelter and also, where directly related to securing such shelter, at*** resolving the circumstances that

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contributed to his or her emergency situation *[and securing a permanent shelter arrangement which he or she will be able to ultimately maintain without EA]*. Refusal***, without good cause,*** to cooperate with *[the mutual agreement's plan of action]* ***conditions set forth in the service plan that are directly related to the recipient's search for permanent housing*** or ***with*** the initial development of *[such an agreement]* ***the service plan*** shall render the client ineligible for continuing EA benefits***, until such time as cooperation has been resumed***; and

6. Arrange a face-to-face meeting with the client to prepare the *[mutual agreement]* ***service plan*** at a time and place convenient to both the client and the MWD..

i. The *[mutual agreement]* ***service plan*** shall be signed by both the client and the MWD.

ii. The MWD shall retain the original *[agreement]* ***plan*** and provide a copy to the client.

iii. The *[agreement's individualized plan of action]* ***service plan*** shall include, but is not limited to:

(1) Selection of shelter arrangement which takes into consideration the client's individual circumstances, such as, but not limited to, mental and/or physical problems;

(2) Client responsibility to seek alternative permanent shelter or an optional permanent housing arrangement and to document such efforts in writing. The MWD shall have an obligation to assist the client in the search for permanent housing and document such assistance in the case record.

(A) Such permanent housing searches are to begin no later than the 11th day after the date the *[mutual agreement]* ***service plan*** is signed.

(B) The MWD shall determine a reasonable number of contacts to be made per week by the client, taking into consideration his or her medical and/or social circumstances and availability of potential housing. For example, it shall be considered reasonable for a person who is not suffering from physical or mental incapacity to conduct up to 10 contacts per week, if potential housing resources are available. Where good cause for non-participation in housing searches exists, the *[agreement]* ***service plan*** shall reflect the applicable reason(s).

(C) Contacts may be made by telephone, personal visit or a combination of both.

(D) Written documentation shall consist of the date of the contact, the telephone number (if applicable), the address (location) of the housing site, and the name of the person contacted (landlord or agent);

(3) Provision of services as set forth at (l) below, emphasizing the *[following]* reasonable transportation needs*[:]* ***of the client associated with the areas identified at (c)6iii(3)(A) through (E) below. Reasonable is defined as the least expensive mode of transportation that can be provided to accomplish the activity or need identified.***

(A) Transportation to shelters or to alternate temporary housing;

(B) Search for alternate temporary or permanent shelter;

(C) Negotiation of Food Stamp Program authorizations to participate at issuance sites which are inaccessible to the client;

(D) Visits to the appropriate MWD office for case processing purposes and/or to secure assistance payments or visits to any other appropriate service agency for assistance, such as the social security office; and

(E) Attendance at counseling sessions;

(4) Referral to and/or application for other available benefit entitlements or services (for example, drug and alcohol rehabilitation program, Department of Community Affairs, Social Security Administration, Home Energy Assistance Program, Food Stamp Program, Community Mental Health Services, Section 8 Housing Certificates); and

(5) If appropriate, involvement in a training or rehabilitation program, such as the Job Training Partnership Act (JTPA) or vocational rehabilitation, likely to result in employment or the securing of a job leading to the maintenance of affordable permanent housing. It is noted that such involvement shall be coordinated with existing General Assistance Employability Program (GAEP) requirements.

iv. The MWD shall monitor the EA client's compliance with the *[agreement]* ***service plan*** as well as document MWD support activities at least once a month.

v. The MWD shall reevaluate and/or revise the *[mutual agreement]* ***service plan*** as warranted by changes in the EA client's shelter needs and/or other pertinent circumstances.

(d) An EA client shall be entitled to receive a written notice, inclusive of appeal rights, concerning a decision made by the municipal welfare director to deny or terminate EA benefits.

1. Denial notices shall be provided to the client immediately upon an EA denial determination.

2. Termination notices shall be provided at least 10 days in advance of the EA termination effective date.

3. Written notice shall be provided by the MWD at a face-to-face meeting with the EA client. At such time the MWD shall explain to the client the action to be taken, the reason(s) for such action, and his or her right to request a fair hearing.

4. Upon receipt of a notice of EA denial or termination, the client has a right to request a fair hearing provided that such request is made on or before the effective date of the EA termination or within 10 days of the personal delivery receipt date of a denial notice. Such appeals shall be resolved through the State level fair hearing process in accordance with N.J.A.C. 10:85-7.4 through 7.6.

i. When a fair hearing is requested because of receipt of an EA termination notice and such request is made on or before the effective date of the EA termination, EA shall continue ***unaltered*** until the fair hearing is held and a final decision is rendered by the Director of DEA.

(e) *[The goal of GA/EA is to provide shelter and to coordinate support services, with client participation, at all levels of government and with other appropriate sectors of the human services delivery community. EA is designed to provide, with reasonable certainty, for the initial and/or continuing emergency shelter needs of otherwise eligible GA recipients. It is acknowledged that there is a shared responsibility among governmental/non-governmental entities at the municipal, county and State levels.]* ***Rules concerning emergency shelter assistance are as follows:***

1. Emergency shelter: The authorized payment shall be the actual cost of adequate emergency shelter arrangements, at the most reasonable rate available, for a specified temporary period not to exceed five calendar months which shall include any portion of the initial month of EA. The shelter arrangement shall also be reasonably related to the client's mental and physical needs (for example, if a client is suffering from a mental or physical incapacity, and the shelter arrangement would be detrimental to his or her condition, for instance in a situation where a client has recently been discharged from a hospital, requiring bed rest, he or she should be placed in a shelter arrangement that is available for 24 hours, enabling bed rest). Such emergency shelter, wherever possible, shall be in the municipality in which the eligible individual currently resides. If, however, shelter as delineated above is not available within the municipality of customary residence, the recipient, as a condition of eligibility, shall be obliged to accept shelter as delineated above which is situated outside the municipality of customary residence.

i. The temporary time period identified at (e)1 above shall not apply to EA recipients who have been medically diagnosed, as documented by a physician's certification, as having Acquired Immune Deficiency Syndrome (AIDS), or Human Immunodeficiency Virus (HIV) Positive with symptoms, or are terminally ill, and are unable to perform activities of daily living.

ii. In order to enable individuals medically diagnosed, as documented by a physician's certification, as having Acquired Immune Deficiency Syndrome (AIDS), Human Immunodeficiency Virus (HIV) Positive with symptoms, and those who are terminally ill, to maintain or secure residence in a permanent housing arrangement, funds shall be authorized, based on the most reasonable housing rates available, to supplement their regular grants of assistance, until such time as they qualify for SSI and/or similar statutory benefits pursuant to filing of application as stipulated at N.J.A.C. 10:85-8.3. Individuals who lose entitlement to presumptively issued SSI and/or similar statutory benefits and otherwise qualify for GA shall be provided EA, in accordance with this subparagraph and (e)1i

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above, pending confirmation of their permanent entitlement to such benefits.

iii. (No change.)

iv. Every effort shall be made to locate suitable housing in the community of prior permanent residence. If, however, the municipal welfare agency locates suitable permanent housing, not necessarily in the municipality of prior residence, the client must accept the arrangement. Refusal to relocate without good cause renders the person ineligible for further emergency assistance for temporary shelter. Good cause may include, but is not limited to, the need to travel more than one hour each way to and from a place of employment by public or private transportation.

v. Payment may be authorized for furniture storage, moving expenses, advance rent and security deposits for rent and/or utilities when the municipal welfare director determines it is necessary to establish the client in a new permanent living arrangement.

2. Temporary rental assistance may be authorized by the MWD upon initial authorization of EA or at any other time during the receipt of EA *[as follows:]**. **Temporary rental assistance benefits, as authorized in accordance with (e)2i and ii below, shall be expedited by the MWD to preclude the loss of an existing or potential housing arrangement.***

i. The individual is facing pending eviction from permanent housing, which had previously been affordable, for reasons such as, but not limited to, loss of employment, temporary unemployment or underemployment, or it is anticipated that such permanent housing will be affordable within a three-month period.

ii. The individual is able to locate a housing arrangement or can be accommodated in a housing arrangement in lieu of a temporary shelter arrangement.

(1) The determination of the MWD to authorize temporary rental assistance shall be based on conclusions reached as a result of the development of the action plan as set forth at (c) above, which indicates the individual's cooperation to comply with the case management efforts of the MWD and that there is reasonable assurance that:

(A) The individual's anticipated income from other sources, including employment, will support the ongoing housing expenses without continued temporary rental assistance; or

(B) The individual shall continue to conduct permanent housing searches to find a more affordable housing arrangement.

iii. Issuance of temporary rental assistance is governed by the following:

(1) Temporary rental assistance shall be provided for those housing arrangements which can be considered of a "permanent nature" by the client and/or the community.

(2) The amount of the authorized temporary rental assistance shall take into account all shelter costs including basic utilities.

(3) MWDs shall authorize temporary rental assistance of up to $200.00 per month to supplement an EA recipient's regular GA grant. MWDs shall ensure, however, that the recipient retains *[at least]* ***the greater of*** 25 percent of his or her monthly grant or a minimum of $35.00. Amounts in excess of ***the*** 25 percent ***or the $35.00 minimum*** may be authorized when it is determined that the client has special needs. The portion of the client's regular grant retained by the MWD as well as any other available income shall represent his or her contribution towards the monthly shelter costs. The recipient shall, as a condition of eligibility for temporary rental assistance, cooperate in making application for other benefits for which he or she has potential entitlement, such as Section 8 Housing Certificates and/or the Home Energy Assistance Program, with the assistance of the MWD.

(4) Requests for temporary rental assistance in amounts in excess of $200.00 must be approved by DEA prior to issuance.

(5) The MWD shall authorize temporary rental assistance on a case by case basis up to a period of one year. Such authorization shall be based on a review of the individual's circumstances and in keeping with the mutually developed *[agreement]* ***service plan***.

3. Monthly EA shelter extensions beyond the five-month maximum EA period shall be authorized by the MWD to individual(s) because of any of the following:

i. Due to illness or incapacity of the client or of another person which requires the client's presence in the home on a substantially continuous basis, the individual(s) is unable to perform activities of daily living including participating in permanent shelter searches and/or complying with any of the other provisions of the *[mutual agreement]* ***service plan***;

ii. Alternate permanent housing is anticipated to be available or a change in circumstance, for example, other sources of income, is expected within two months subsequent to the extension month which will obviate the need for such shelter extensions; or

iii. The EA recipient has satisfactorily fulfilled his or her permanent housing search responsibilities or was determined unable to make such permanent housing searches and continues to require additional EA shelter assistance.

4. Upon authorization of EA extensions beyond the five-month maximum period, the MWD shall conduct a face-to-face interview with the EA client to reinstate the provisions of the *[mutual agreement]* ***service plan*** or to adjust the *[agreement]* ***service plan*** for a more appropriate plan of action. If, for reasons of "good cause," the MWD determines that the EA client will be unable to fulfill any or all of the provisions of the *[mutual agreement]* ***service plan***, such reasons shall be duly noted on the *[agreement]* ***service plan*** and shall be substantiated by appropriate documentation in the case file.

5. Municipalities may be authorized to operate approved EA programs in order to serve specific population target groups such as those suffering from substance abuse, mental illness, and/or other debilitating conditions. Such special initiatives will be implemented through the submission and approval of plans designed to address locally suited alternatives to homelessness. Plans must:

i. Include the goal of reducing the use of motels/hotels for emergency placements as well as facilitate a more humane response to EA recipients in need of support services beyond simply shelter requirements;

ii. Describe the target group, the number of individuals to be served by the program components, type of services to be provided, cost estimates, cost effectiveness and procedures for monitoring/evaluation of the local initiatives;

iii. Include a coordinated involvement of non-profit organizations as well as signify local collaborative efforts undertaken through the Human Services Advisory Council (HSAC) and Comprehensive Emergency Assistance System (CEAS); and

iv. Have prior written approval from DEA before funding can be authorized.

(f) Emergency food: As authorized in (a) above, when food is not available from any other source, an amount of $4.50 per day per person shall be allowed for a specified number of days only, and in no event beyond such time as other funds become available (for example, next regular assistance payment, support payment, receipt of earnings, receipt of food stamps and so forth).

1. When it is necessary to provide temporary living arrangements in a hotel, motel, or other facility in which cooking facilities are not available or are determined by the MWD to be inadequate, payment for restaurant meals shall not exceed $7.50 per person per day and shall be allowed until such time as other funds become available (for example, next regular assistance payment, support payment, receipt of earnings, receipt of food stamps, and so forth).

(g) Emergency clothing: When authorized under (a) above to the individual(s) to purchase minimum essential clothing for physical health and safety, payment may be granted not to exceed the amounts stated below:

Age	Amount
Adult	$86.00
Child: 13 and over	86.00
Child: 5 through 12	48.00
Child: Birth through 4	29.00

1. (No change in text.)

(h) Emergency house furnishings: When authorized under (a) above, emergency assistance for house furnishings which the MWD deems urgent and essential to the physical health and safety of the eligible unit shall not exceed the maximum allowances in the following table.

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Number of Persons in Eligible Unit:	1	2	Persons 3	4	5	6 or more
Kitchen Furnishings:						
Range	$130	$130	$130	$130	$130	$160
Refrigerator	200	200	220	220	220	260
Washing Machine			200	200	200	200
Dinette Set	45	45	65	65	85	85*
Kitchen Equipment	50	60	60	72	72	80
Living Room Furnishings:						
Couch and Chair(s)	125	175	175	225	225	225
Table	20	20	20	20	20	20
Lamp(s)	20	20	20	35	35	35
Floor Covering	25	25	25	25	25	25

*Over 6—$12 each additional person

Bedroom and Furnishings:		
Box Spring, Mattress, and Frame, per set	$110 Twin	$130 Double
Bunk Beds, per set of 2 (complete)	$135	
Crib with Mattress	$ 50	
Chest(s) of Drawers	$ 50 Per Person	
Bed and Bath Linens and Miscellaneous Furnishings	$36 Per Person	(Not to exceed $200 per family)
Window Coverings	$2.50 Per Window	

1. Funds from the regular assistance grant or funds considered in the development of that grant are not to be considered in computing the amount of payment for replacement of house furnishings lost or destroyed in the incident giving rise to the emergency.

(i) Persons who appear to be eligible for AFDC shall be referred immediately to the county welfare agency. However, emergency assistance may be provided under the conditions stated in N.J.A.C. 10:85-3.2(b)4ii and in accordance with this section.

(j) In an emergency situation such as sudden removal of the mother or responsible caretaker from the home, the MWD may be called upon to provide a temporary care arrangement for the child(ren) until it is possible to refer the situation to the county welfare agency or the appropriate office of the Division of Youth and Family Services (see N.J.A.C. 10:85-3.2(b)4).

1. (No change.)

(k) Emergency assistance payments shall be made by order or check drawn to a vendor or as direct payment to the recipient, in accordance with N.J.A.C. 10:85-4.3.

(l) (No change in text.)

(m) Municipal welfare directors and case workers shall periodically receive training from the DEA targeted to the EA program.

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Social Services Program for Individuals and Families Personal Needs Allowance: Residential Health Care Facilities and Boarding Homes

Adopted Amendments: N.J.A.C. 10:123-3.1 through 3.4

Proposed: February 19, 1991 at 23 N.J.R. 382(a).

Adopted: March 22, 1991 by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: March 22, 1991, as R.1991 d.215, **without change.**

Authority: N.J.S.A. 44:7-87.

Effective Date: April 15, 1991.

Operative Date: May 1, 1991.

Expiration Date: July 13, 1995.

Summary of Public Comments and Agency Responses:

The Division received two comments, one from William R. Abrams, Vice President of the New Jersey Association of Health Care Facilities (Association) and one from Lucille Cordray, Administrator of the Howell Haven Residential Health Care Facility, Farmingdale, New Jersey.

COMMENT: The Association questioned the DYFS policy for calculating the amount of the increase in the Personal Needs Allowance. The Association surmised that the increase in the Personal Needs Allowance was "rounded up" to the next highest whole dollar, to the disadvantage of the facilities. The Association suggested two alternative approaches which called for either rounding to the nearest dollar or to the closest half dollar.

RESPONSE: The Association was incorrect in its assumption that the increase in the Personal Needs Allowance is rounded to the next highest dollar. Over the last several years, the increase in the Personal Needs Allowance has been rounded to the nearest dollar. However, the implementation of the increase in the Personal Needs Allowance this year will not coincide with the increase in the Federal Cost of Living for 1991 in the Federal Supplemental Security Income rate, which took place in January, 1991. Given that the PNA increase should take effect on the first day of the month following adoption, the effective date of this adoption is the earliest which could be achieved under Department of Human Services procedures and the New Jersey Administrative Practice Act, without going through the process for an emergency adoption. Following the normal proposal and adoption process, it was known that the increase would not be effective until April 15, 1991, with an operative date of May 1, 1991. Consequently, the increase in the Personal Needs Allowance was prorated over an eight month period, so as not to adversely affect the operators of the residential health care facilities. This had the effect of making the increase appear to have been rounded to the next highest dollar, when actually it was rounded to the nearest dollar.

The Division has been in contact with the New Jersey Association of Health Care Facilities, and they understand and accept this practice. Because of the complexity of the practice of setting the increase each year, the Division will call a meeting of affected operators to explain and discuss this practice.

COMMENT: The Administrator of the Howell Haven Residential Health Care Facility wanted more controls placed on a resident's use of the Personal Needs Allowance.

RESPONSE: The Division disagrees with the commenter's suggestion to place controls on a resident's use of the Personal Needs Allowance. The Division feels that the needs, interests and capabilities of boarding home and residential health care facility residents vary greatly. Also, one of the purposes of the Personal Needs Allowance is to enhance the resident's sense of self-worth and independence, by being able to buy desired items which the facility does not provide.

To develop and enforce a policy of greater controls on the use of the Personal Needs Allowance which restricts a resident's freedom of choice, while yet being responsive to each individual's unique circumstances, would be unwieldy, intrusive and, in the Division's opinion, inadvisable.

COMMENT: The Administrator of the Howell Haven Residential Health Care Facility commented that the increase in the Federal Supplemental Security Income rate was insufficient.

RESPONSE: The yearly increase is determined by the Federal Government, and is not within the control of the Department of Human Services.

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Full text of the adoption follows.

10:123-3.1 Purpose

The purpose of this subchapter is to ensure that each eligible resident of a boarding house or residential health care facility has reserved to him or her a monthly amount as a personal needs allowance.

10:123-3.2 Scope

This subchapter applies to all eligible residents, as defined in this subchapter, of all boarding houses and residential health care facilities in the State of New Jersey as such are defined in this subchapter.

10:123-3.3 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings.

. . .

"Eligible resident" means a resident of a boarding house or residential health care facility who receives Supplemental Security Income or General Assistance, and as otherwise defined in the Rooming and Boarding House Act of 1979, N.J.S.A. 30:1A and 11A.

. . .

10:123-3.4 Amount

The owner or operator of each residential health care facility or boarding home shall reserve to each Supplemental Security Income recipient residing therein, and the owner or operator of each residential health care facility shall reserve to each General Public Assistance recipient residing therein, a personal needs allowance in the amount of at least $62.00 per month. No owner or operator or agency thereof shall interfere with the recipient's retention, use, or control of the personal needs allowance.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES BOAT REGULATION COMMISSION

Boating Regulations

Adopted Repeal and New Rule: N.J.A.C. 7:6-1.31 Adopted Amendments: N.J.A.C. 7:6-1.37, 1.42, 6.2, 6.3 and 6.4

Proposed: February 19, 1991 at 23 N.J.R. 392(a).

Adopted: April 1, 1991 by Boat Regulation Commission, Robert J. DelTufo, Attorney General, Department of Law and Public Safety.

Filed: April 1, 1991 as R.1991 d.225, **without change.**

Authority: N.J.S.A. 12:7-23.1 et seq. and 12:7-34.36 et seq., particularly, 12:7-34.40, 12:7-34.49, and 12:7A-29.

Effective Date: April 15, 1991.

Expiration Date: June 9, 1994.

Summary of Public Comments and Agency Responses:

On February 19, 1991, the Boat Regulation Commission ("Commission") proposed a repeal and new rule and several amendments to its rules regarding boating and watercraft noise control. Notice of the proposed repeal, new rule and amendments and of the public comment period concerning the proposal was published on February 19, 1991 in the New Jersey Register at 23 N.J.R. 392(a). In addition, notice of the proposed rulemaking and public comment period was published on February 19, 1991 in the Star-Ledger and The Press of Atlantic City. Written comments were received from the following four individuals or organizations: Princeton Public Affairs Group, Inc. (on behalf of the National Marine Manufacturers Association), Joan D. Gelber, New Jersey Council of Diving Clubs, and Lake Hopatcong Regional Planning Board.

N.J.A.C. 7:6-1.31(a)

COMMENT: We favor the expansion of speed regulations to require operators to avoid the risk not only of property damage but of bodily injury as well. We continue to maintain, however, that a more meaningful regulation of wash and wake is required, particularly for areas such as Lake Hopatcong. The regulation now in effect, and the one proposed is either unenforceable, or simply unenforced in its present form. The section should be re-drafted to give a Marine Patrol officer specific guidance as to when to make a stop and issue a citation for creating too large a wake/wash.

RESPONSE: The proposed amendment which is adopted herein was specifically drafted to address the concern expressed by the commenter. The standard set in the rule that a power vessel must be operated only in such a manner that no damage or injury is caused by its wake is a universal, recognizable standard. At subsection (b), the Commission set forth in detail those specific areas where vessels must operate at "slow speed" which is defined at subsection (c). Subsection (d) defines "no wake speed" and the specific areas in which "no wake speed" must be maintained. The Commission does not believe that a more detailed definition of wash and wake is necessary in order to properly enforce this regulation.

N.J.A.C. 7:6-1.31(b)1

COMMENT: We recommend that the additional hazards found at N.J.A.C. 7:6-4.5 be included here to trigger the slow speed requirement.

RESPONSE: The Commission will adopt the language of the regulation the way it was proposed as a fair and practical list of hazards. N.J.A.C. 7:6-4.5 is specific to Lake Hopatcong and included additional specific hazards to trigger the slow speed requirement at the request of Lake Hopatcong managers/users. The Commission maintains that it may not be fair or feasible to impose the additional hazards Statewide. As an example of why this approach may be infeasible, the Commission notes that swimming sometimes occurs in areas where such activity is prohibited. Boaters who do not anticipate that swimmers will be present there should not be held to a slow speed limitation.

COMMENT: We respectfully object to the exemption of Lake Hopatcong from this section. The exemption has the effect of leaving no speed regulation between the distances of 100 feet to 200 feet from marinas, piers, etc. . . . on Lake Hopatcong.

RESPONSE: Lake Hopatcong was exempted only from N.J.A.C. 7:6-1.31(b)1 because a specific regulation regarding speed of vessels on Lake Hopatcong is found at N.J.A.C. 7:6-4.5. If the Regional Planning Board wishes to amend that specific section to mimic the requirements of the general rule, it is welcome to come before the Commission to request such a change.

N.J.A.C. 7:6-1.31(d)

COMMENT: We recommend that a clear cut procedure be established for the designation of "slow speed/no wake" areas, and for the marking of said areas. The effect of the present proposal would be to empower buoy tenders to set speed laws. The Lake Hopatcong Regional Planning Board would be happy to work with the Commission or the Marine Bureau to chart slow speed/no wake zones. We suggest that any deviations from the chart be referred to the Board for comment.

RESPONSE: While the Commission appreciates the Board's offer of assistance, it must point out that a procedure does exist within the State Police Marine Bureau to handle requests to post "slow speed/no wake" signs. Requests are made to the Bureau which then investigates whether the location meets the criteria of N.J.A.C. 7:6-1.31 and what the weather conditions are at the location. If the location is approved, a sign is installed. The Army Corps of Engineers, Aids to Navigation section installs buoys in locations approved for that type of marker.

The Commission disagrees that the proposed amendment empowers buoy tenders to set speed laws since the very purpose of the amendment to this section was to set a general standard for slow speed in the areas described in the rule in those instances where no marker or sign specifies that it is a slow speed zone. The Commission maintains that it is impractical to mark every location in the State and that the general standard will adequately address speed in unmarked areas.

N.J.A.C. 7:6-1.37(d)

COMMENT: While we have no particular objection, we do not agree reducing the minimum allowable length for a waterskiing tow rope from 50 to 35 feet will result in increased safety and wonder what is the basis for the reduction.

RESPONSE: The Commission reduced the minimum allowable tow rope length in response to arguments made by the New Jersey Waterskiing Association that competition skiing requires this length. The Commission saw no safety risk in this reduciton and therefore made the requested change.

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N.J.A.C. 7:6-1.37(i)

COMMENT: No permit should be required for use of a training boom for barefoot waterskiing on Lake Hopatcong on weekends or holidays from May 15 through September 15. Also, we suggest that guidelines be established for what "good cause" will result in denial or cancellation of training boom permits.

RESPONSE: The Commission maintains that permits for the use of training booms for barefoot waterskiing are essential to control and protect public safety. Only by requiring that persons apply for and receive permits can the Marine Law Enforcement Bureau check that individuals are qualified to use the training booms and that field conditions are appropriate for such use. In terms of establishing "guidelines" as to what constitutes "good cause" for denial or revocation of a permit, the Commission maintains that the Marine Law Enforcement Bureau must be provided with flexibility to assess all variables at a given time and location which may impact on the safe use of training booms. This variability of field conditions makes setting specific guidelines impractical. Good cause for denial or revocation of a permit should be articulated to an individual at the time such action is taken.

N.J.A.C. 7:6-1.42(a)2i

COMMENT: The New Jersey Council of the Diving Clubs has no problem with the stated intention behind this subsection. However, the wording is somewhat confusing and, on first reading, gives the impression that the face of the flag has to be visible from all angles. No flag is visible all around the horizon at any given time since a flag is basically two dimensional and can be viewed from either side, but not directly on.

RESPONSE: This requirement of the rule simply mandates that the flag used to display the location of a diver must not be obstructed so that it is not visible all around the horizon. The rule makes no change to the requirements regarding shape, markings or size, etc., of the flag itself which must still be one which is approved by the Commission. The Commission does not think that a change of the proposed language is necessary.

N.J.A.C. 7:6-6.3

COMMENT: It is suggested that the term "capable of" be deleted from the proposed regulations. This change will clarify the point at which noise levels become noise limitation violations. Under both the current and proposed regulations, the term "capable of" leaves doubt as to when a violation, in fact, occurs. The word "capable" means "the potential ability to undergo change." That section of the rule should instead read: "No person shall operate or give permission to operate any vessel or watercraft emitting noise in or upon waters of this state . . ."

RESPONSE: The Commission maintains that the term "capable of" is necessary to effectuate the testing and enforcement provisions of this rule. With implementation of the newly adopted dock-side noise violation test method described at N.J.A.C. 7:6-6.3(c), the term "capable of" is necessary since the Commission anticipates that most vessels will not be in operation and therefore not emitting noise at the time that enforcement staff arrive to administer the noise emission test. As a result, marine enforcement personnel will require vessel owners or operators to start up the vessel's engine in the lowest throttle setting in order to administer the test. If the engine noise at that point is in excess of 90 dba, then the standard has been met and the vessel is determined to be capable of emitting that level of noise which violates the standard. Use of the word "emitting" assumes operation of the vessel and would therefore not be compatible with the typical circumstances occurring at the time the test is administered. The langauge of this section will therefore remain the same.

COMMENT: The proposed regulation should provide a noise level exemption for vessel and engine manufacturers engaged in testing procedures. Vessel and engine testing is an inherent industry process which is regularly and routinely engaged in by the State's marine manufacturing companies. These testing operations represent an extremely small portion of the overall boat operation in the State. The commenter provided specific language for this exemption.

RESPONSE: For those vessels which are manufactured for racing purposes, the race test permit procedures found at N.J.A.C. 7:6-6.3(f) adequately address the needs of the manufacturing sector to test the vessels and their engines for limited periods of time. However, for boats that are manufactured for sale to the general public for all-purpose use, the Commission maintains that such a manufacturing exemption is inappropriate and that such vessels must be equipped to meet the noise level limitation set forth in the rule since the purchasers of those vessels will be required to meet that standard.

COMMENT: Several comments were received criticizing the increased noise emission level in the proposed rule to 90 dba. One commenter claimed that raising the maximum allowable nosie emission level from 82 dba to 90 dba will have a serious detrimental impact upon the boating public and the general population residing in recreational boating areas and that the cumulative effect of emissions at that level from a handful of vessels would be devastating. Another commenter objected to the "unconscionably high level," stating that the proposed 90 dba level will be even more painful and distressing than at present.

RESPONSE: The Commission based the 90 dba noise emission level on the findings and recommendations of the National Association of State Boating Law Administrators which arrived at that number after noise-testing vessels using a variety of methods including static tests and the J34 pass-by test. 90 dba at the transom was agreed upon as a level which the majority of vessels could meet or could be made to meet with the installation of proper equipment. The Commission maintains that the limit is a practical and achievable limit while still within as tolerable a range as possible. The Commission points out two things: one, that not every boater operates at full throttle at all times; and two, the adoption of the dockside noise emission testing method should catch more violators and therefore contribute to an overall improved enforcement program.

COMMENT: Watercraft sound emissions are a function of several separate factors like the manner of boat operation, including distance from shore, engine speed and trim angle; the exhaust system; and the boat hull configuration which all contribute to noise levels. These factors must be considered in establishing procedures which measure and enforce noise emission restrictions.

RESPONSE: The dockside noise emission test method which the Commission is herein adopting is a universal test which outweighs the variability of boat designs. As a result, the Commission disagrees that vessel design features must be factored into the test method.

COMMENT: Several comments were received regarding the dockside test method proposed by the Commission. Stated one: the dockside test is an utterly inappropriate means of measuring the noise, by allowing the test to be made at the dockside at the lowest throttle setting in neutral gear. Another commenter explained that there are two types of test methods referred to as the stationary sound level measurement procedure and the shoreline sound level measurement procedure. He continued that because the regulations prescribe only the stationary test method, excessive watercraft noise resulting from careless or inappropriate boat usage cannot be effectively controlled. The stationary test is designed to measure only watercraft equipment performance. The shoreline test procedure, however, is capable of measuring excessive noise resulting from boat usage experienced on shore. The commenter suggested that both test procedures may be alternatively employed. Another commenter reiterated the desirability of providing flexibility in the rules by allowing enforcement officers to administer either or both tests while applauding the Commission for finding a new test because the existing method is severely limited by field conditions.

RESPONSE: The pass-by test which had been employed by marine enforcement personnel in accordance with the existing rule required that a vessel pass by a boat equipped with a sound measuring device at a certain distance and at a certain degree of throttle so that noise emissions could be measured. Due to the extreme variability of field conditions, this test proved difficult to administer, time consuming and uneconomical. Rather than aid enforcement of noise emission limits, the test often made enforcement more difficult because of the practical difficulties inherent in administration of this test method. Specifically, the Commission found that the time necessary to track down, stop and then subject suspected violaters to run the test course made efficient enforcement difficult. Training officers in proper administration of the test under vairable field conditions also proved time consuming. Most importantly, the Commission found that the pass-by method was not the most effective way to enforce the noise limits against suspected violators who were reported to authorities through citizen complaints. Since violators had to be "caught in the act," officers had difficulty locating moving vessels after complaints were received because of the lapse of time between reports of noisy vessels and the arrival of enforcement personnel at the scene. This problem has always been compounded by the limited resources and staff available to patrol the State's waterways and administer the test.

The dockside test, however, is a universal test which allows for the judicious use of enforcement personnel and equipment. Because it does not need to be administered on the open water, even local enforcement agencies which do not own a boat can go to the dock and administer

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the test there. The most obvious advantage of this increased enforcement potential is that more violators will be cited. In terms of the effectiveness of administering the test at low throttle and the concern that the operation of boats on the open water produces a much greater noise level, the Commission points out that if a vessel is tested and exceeds the 90 dba limit at the throttle setting, then it clearly will violate the standard at a higher throttle setting. Such a boat cannot be operated until the owner equips the vessel so that it can meet the 90 dba standard. In addition, if a vessel is operated in such a manner that it is producing excessive noise, it is possible that its operation may be in violation of other operational requirements of N.J.A.C. 7:6 which can be enforced as moving violations on the open water.

The Commission maintains that the dockside test method is a more effective and practical test method which can be administered within the limitations of staff and equipment which enforcement personnel are faced with. Further, the Commission believes that the test method will allow it to reach more violators, leading to a stronger enforcement program.

N.J.A.C. 7:6-6.3(f)

COMMENT: The intent of this amendment is apparently to assure that no race testing is conducted beyond sunset. We believe that the existing regulation prohibiting race testing beyond 6:00 p.m. is also a good one, and should remain in effect to provide protection from undue noise emissions later than 6:00 p.m. during that time of year when the sunset is later. We, therefore, propose this alternative language:

4. All race tests should be conducted between the hours of 10:00 a.m. and sunset or 6:00 p.m., (local time) whichever is earlier.

RESPONSE: The Commission's main concern in proposing the amendments to this section is promoting safe race testing during daylight hours which the Commission believes is achieved with the proposed amendment. The Commission notes that the times set out in this section prior to the proposed amendments were specific to certain water bodies in the State. The changes made will make the race testing times uniform throughout the State. The regulation is therefore being adopted without change.

General Comment

COMMENT: It is important to bring to the Department's attention an active legislative proposal which directly pertains to the noise control issues considered by the proposed regulations. Senate Bill 3355 sponsored by Senator Len Connors establishes new watercraft sound level limitations and would specifically permit stationary sound and shoreline sound level measurement procedures. Legislative membership and staff have indicated that this bill is likely to be considered in the near future.

RESPONSE: The Commission is aware of the S-3355 and thanks the commenter for copies of the bill provided with this comment. The Commission will monitor the movement of this bill with interest.

Full text of the adoption follows:

7:6-1.31 Speed

(a) No person shall operate a power vessel or allow a power vessel to be operated in a manner where the speed of the power vessel may cause danger of injury to life or limb or damage to property. The speed of every power vessel shall be regulated so as to avoid the risk of damage or injury by any means, from the power vessel's wake.

(b) All power vessels shall reduce their speed to a slow speed when passing:

1. Any marina, pier, dock or wharf at a distance of 200 feet or less, except on Lake Hopatcong which shall be in accordance with N.J.A.C. 7:6-4.5;

2. Work barges or work floats while actually engaged in construction;

3. Through bridge spans;

4. Through lagoons, canals and confined areas of less than 200 feet in width;

5. Vessels not under command; or

6. Emergency vessels displaying sequential flashing or rotating blue lights.

(c) "Slow speed" as used in this section is defined as the speed at which a power vessel moves through the water and is able to maintain minimum headway in relation to the vessel or structure being passed.

(d) All power vessels, when moving through an area that has been marked a "Slow Speed/No Wake" area either by buoys or by signs with those words, shall move only at a no-wake speed. No vessel may be operated on plane or at other than minimum headway speed while in a "Slow Speed/No Wake" area. "No wake speed" as used in this subsection shall mean the speed at which a power vessel moves through the water while maintaining minimum headway and producing the minimum wake possible.

7:6-1.37 Water skiing

(a) All operators of power vessels towing ski or aquaplane riders while underway, must at all times keep at least 100 feet distant from any shore, wharf, pier, bridge structure, abutment or persons in the water. In passing another boat, the operator thereof must keep at least 100 feet distant from any other craft.

(b) and (c) (No change.)

(d) Tow lines shall not be less than 35 feet nor more than 75 feet in length.

(e) Waterskiing, aquaplaning or towing of skiers or aquaplanes will be permitted only during the hours between sunrise and sunset.

(f) The ski boat shall contain at least one throwable personal flotation device (PFD).

(g) (No change.)

(h) The term "waterskiing" shall be defined as anything with a rider, being towed by a power vessel by means of a tow rope, tow line, or training boom except that another vessel being towed shall not be considered to be waterskiing.

(i) The use of a training boom for instruction in barefoot waterskiing may be allowed only by permit issued by the Marine Law Enforcement Bureau. The permit for the use of a barefoot waterskiing training boom shall only be issued for the time period between sunrise and sunset. Permits may be denied or cancelled by the Marine Law Enforcement Bureau for good cause.

(j) The Commission may, upon application, waive any one or more of the above subsections for events of public entertainment on any wholly owned private lake, provided that it finds the event to be consistent with the interests of boating safety.

7:6-1.42 Diving and swimming

(a) General provisions with respect to diving and swimming are as follows:

1. (No change.)

2. Any person while diving shall mark his or her position with a buoyed flag approved by the New Jersey Boat Regulation Commission:

i. Such flag shall be displayed so that it is visible all round the horizon from a buoy, float, boat or other floating object;

ii. (No change.)

3.-6. (No change.)

(b)-(d) (No change.)

7:6-6.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"Department" means the Department of Law and Public Safety, Division of State Police.

. . .

7:6-6.3 Noise limitation provisions

(a) No person shall operate or give permission for the operation of any vessel or watercraft capable of emitting noise totalling in excess of 90 dba in or upon the waters of this State.

(b) Measurements shall be made by a sound level meter which satisifies ANSI-S 1.4, type 2, or equivalent, and is certified by the Department of Environmental Protection, Office of Noise Control, with reference, as applicable, to standards of the New Jersey Office of Weights and Measures or the National Bureau of Standards or both, or by other competent authority designated by the Office of Noise Control.

(c) The noise emission test measurement shall be made with the sound level meter at a distance of not less than four feet above the water at a point where the transom gunwale and port or starboard gunwale intersects. The vessel being tested shall operate its engine at the lowest throttle setting in neutral gear. In the case of a vessel

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with multiple engines, said engines shall operate together at the lowest throttle settings in neutral gear. Personal watercraft, jet boats and all other vessels which have no neutral gear shall operate at the lowest throttle setting with minimum or no headway motion.

(d) Any marine police officer or other law enforcement officer certified by the Office of Noise Control with a reason to suspect that a vessel is exceeding the noise limitation may require the operator to submit to a noise emissions test as described in (b) and (c) above.

(e) Any person who fails to comply with the directive to submit to a noise emissions test shall be subject to prosecution under N.J.A.C. 7:6-6.4 and shall be ordered to immediately return the vessel to its mooring and cease operations.

(f) The noise limitation provisions of this section shall not apply to vessels registered and actually participating in racing events or tune-up periods for such racing events, when authorized by the Department or by any other public authority with the Department's approval. Tune-up periods approved pursuant to this section shall be limited as follows:

1. Before any race boat is tested, the driver shall secure a Race Test Permit from the N.J. State Police Marine Bureau.

2. Before the permit is issued, the N.J. State Police Marine Bureau shall obtain a statement from the applicant which shall include the following:

i.-v. (No change.)

vi. Any other information deemed necessary by the N.J. State Police Marine Bureau Station Commander.

3. (No change.)

4. All race tests shall be conducted between the hours of 10:00 A.M. and sunset.

5.-8. (No change.)

9. The provisions of (f)3, 6, 7, and 8 above shall not apply on a body of water in the three day period immediately preceding a race on that body of water. Subject to such restrictions as may be imposed by the U.S. Coast Guard or the N.J. State Police Marine Bureau, testing on days of sanctioned races may begin two hours before the start of the first race.

10. The Station Commander, N.J. State Police Marine Bureau, is authorized to deny or cancel any permit for the reasons of boat traffic, poor weather, confined area, or other valid reason.

7:6-6.4 Failure to comply with the noise emission test

No person shall fail to submit to a noise emission test when so ordered by a duly authorized law enforcement officer.

(a)

DIVISION OF MOTOR VEHICLES

Driver Control Service

Administrative Hearings

Adopted Amendments: N.J.A.C. 13:19-1.1, 1.2, 1.3, 1.5, 1.8, 1.13, 12.2, 12.8 and 12.9

Adoopted Repeals: N.J.A.C. 13:19-12.3, 12.4, 12.5, 12.6 and 12.7

Proposed: November 19, 1990 at 22 N.J.R. 3446(a).

Adopted: March 25, 1991 by Stratton C. Lee, Jr., Acting Director, Division of Motor Vehicles.

Filed: March 26, 1991 as R.1991 d.220, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 39:2-3, 39:5-30, 17:29A-35 and 52:14B-10.

Effective Date: April 15, 1991.

Expiration Date: August 18, 1994.

Summary of Public Comments and Agency Responses:

The New Jersey Division of Motor Vehicles received one comment with regard to the proposal. The comment was submitted by a practicing attorney, Giacomo G. Rosati, Esq. The comment is available for inspection at the Office of the Director, Division of Motor Vehicles, 25 South Montgomery Street, 7th Floor, Trenton, New Jersey 08666. The comment was reviewed and considered by the Division, and is summarized below, along with the Division's response.

COMMENT: The commenter indicated that as a practicing attorney, he is concerned with the proposal to streamline the hearing process relative to requesting hearings in proposed driving privilege suspension cases. The commenter believes that the proposed submitting of questions in advance would detract from the give-and-take of the personal contact between the hearing officer and the client and, sometimes, the attorney. The commenter acknowledged the fiscal urgency confronting the State of New Jersey, but concludes that doing away with the established hearing system will do nothing to enhance the reputation of the Division of Motor Vehicles and questions whether, as a practical matter, it will save that much money.

RESPONSE: The Division does not concur with this comment. Under the revised procedures set forth in the proposal pertaining to hearing requests in proposed license suspension and insurance surcharge collection cases, the hearing request must specify all disputed material facts which the licensee or his or her attorney intend to raise at such hearing. The hearing request must also set forth all legal issues which the licensee or his or her attorney intends to raise and must present all arguments on those issues which the licensee wishes the Division to consider. Where a licensee fails to set forth any disputed material fact in the hearing request and fails to set forth therein any legal issue or any argument on those issues, his or her hearing request will be denied by the Division, and such denial shall be deemed to constitute the final decision of the Division of Motor Vehicles in such matter.

The Division does not perceive that these provisions detract from the "give-and-take" between the person conducting a hearing and the licensee and his or her attorney, since the licensee or his or her attorney will be able to discuss fully and in detail any such disputed material fact or legal issue raised in the hearing request at such hearings. The Division does not agree that its reputation will be diminished by the adoption of the proposed amendments and repeals, since the amendments and repeals simply require the licensee or his or her attorney to set forth in the hearing request all disputed material facts and all legal issues which the licensee or his or her attorney intends to raise at such hearing. The Division anticipates that its adoption of the proposed amendments and repeals should result in a cost benefit to the State of New Jersey, since the Division should be conducting fewer prehearing conferences in proposed license suspension and surcharge collection cases and should be transmitting fewer cases to the Office of Administrative Law for hearings as a result of the amendments and repeals. it is also anticipated that the Division's adoption of the proposed amendments and repeals should (in the context of State government cost savings) have a positive economic impact on the general public.

Summary of Agency-Initiated Changes:

N.J.A.C. 13:19-1.2 has been changed in that a new subsection has been added to specify that requests for a hearing by a person or entity whose business license (that is, motor vehicle dealer license, private inspection center license, auto body repair facility license, junk yard license, driving school license or driving school instructor's license) is proposed to be suspended or revoked shall be sent to the address specified by the Division in its notice of proposed suspension or revocation. The foregoing, which was inadvertently omitted by the Division from its proposal, is now set forth in N.J.A.C. 13:19-1.2(c); subsections (c) through (f) of N.J.A.C. 13:19-1.2 as proposed have been recodified upon adoption to (d) through (g).

N.J.A.C. 13:19-1.8 has been changed to reflect the correct title of individuals who conduct prehearing conferences at the Division of Motor Vehicles. The term "driver improvement specialist" in subsections (b) and (c) of N.J.A.C. 13:19-1.8 has been changed to "driver improvement analyst" to accurately reflect the title of the persons who conduct such prehearing conferences at the Division.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

13:19-1.1 Applicability

The provisions of this subchapter shall apply to administrative hearings in cases involving revocation, suspension or refusal to renew licenses, including cases involving imposition of insurance surcharges pursuant to N.J.S.A. 17:29A-35.

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13:19-1.2 Requests for hearings; disposition of hearing requests

(a) The proposed action to be taken against any licensee by the Division shall become effective on the date set forth in the notice except when otherwise specified, unless the licensee or his or her attorney shall make a request, in writing, for a hearing within 25 days from the date of notice.

(b) Requests for a hearing shall, except as specified by ***(c) below and by*** N.J.A.C. 13:19-12.2(b), be sent to the following address:

Division of Motor Vehicles
Driver Control Services
CN 134
Trenton, New Jersey 08666-0134

(c) Requests for a hearing by a person or entity whose business license (that is, motor vehicle dealer license, private inspection center license, auto body repair facility license, junk yard license, driving school license or driving school instructor's license) is proposed to be suspended or revoked shall be sent to the address specified by the Division in its notice of proposed suspendion or revocation.

*[(c)]***(d)** Requests for a hearing shall specify all disputed material facts which the licensee or his or her attorney intends to raise at such hearing. Requests for a hearing shall also set forth all legal issues which the licensee or his or her attorney intends to raise, and shall present all arguments of those issues which the licensee wishes the Division to consider.

*[(d)]***(e)** Where a hearing request fails to set forth any disputed material fact and fails to set forth any legal issue or any argument on those issues, the request for a hearing shall be denied. The Division shall notify the licensee of this denial and the grounds thereof, and shall notify the licensee that the proposed action shall become effective on such date as the Division shall specify. Such notice shall constitute the final agency decision in the matter.

*[(e)]***(f)** Where a hearing request sets forth disputed material facts which the licensee or his or her attorney intends to raise at such hearing, the Director shall require the licensee to attend a prehearing conference conducted by designated employees of the Division.

*[(f)]***(g)** Where there are no disputed material facts and where a request for a hearing sets forth legal issues and presents arguments on those issues, the Director may either consider those legal issues and arguments on the basis of the written record and render a written determination which shall constitute the final agency decision in the matter; or may require the licensee to attend a prehearing conference conducted by designated employees of the Division; or may transmit the matter directly to the Office of Administrative Law for a hearing pursuant to N.J.A.C. 1:1.

13:19-1.3 Notification of prehearing conference date

The Division shall notify the licensee of the date, time and place of each prehearing conference scheduled pursuant to this subchapter.

13:19-1.5 Adjournments; Failure to appear

(a) No prehearing conferences shall be adjourned from the scheduled prehearing conference date except for good cause and upon order of the Director or an employee designated by the Director. All requests for adjournment must be made in writing, with the reasons specified therein, not later than seven days before the date scheduled for the prehearing conference. All requests shall be sent to the following address:

Division of Motor Vehicles
Driver Control Services
CN 134
Trenton, New Jersey 08666-0134

(b)-(c) (No change.)

(d) In the event a licensee fails to attend a prehearing conference wherein an adjournment has not been granted, the proposed action against the licensee shall be taken and the licensee shall be deemed to have abandoned his request for a hearing.

13:19-1.8 Prehearing conference; purpose; conduct; report; transmittal to the Office of Administrative Law

(a) The purpose of the prehearing conference is to clarify disputed material facts and legal issues raised in the hearing request; to review the evidence upon which the licensee bases his or her claim; to ascertain the discovery needs of the licensee; to supply the licensee with any discovery to which the licensee may be entitled under the uniform Administrative Procedure Rules; and to attempt to resolve the administrative action to be taken.

(b) A driver improvement *[specialist]* ***analyst*** shall conduct a prehearing conference with each licensee who has been scheduled for such a conference pursuant to this subchapter and with the licensee's attorney, if the licensee is represented by an attorney, for the purpose of resolving the proposed administrative action. The driver improvement *[specialist]* ***analyst*** shall produce any relevant materials the Division may have which relate to the proposed administrative action and the licensee shall be permitted to produce any document or other evidence which relates to the proposed administrative action.

(c) The driver improvement *[specialist]* ***analyst*** shall prepare a conference report for each prehearing conference. The conference report shall contain information relevant to the proposed administrative action. If a resolution of the proposed administrative action is reached between the Division and the licensee, the licensee shall sign the conference report indicating that both parties agree to be bound by the terms of the resolution of the proposed administrative action contained therein. If a licensee accepts the resolution of the proposed administrative action, the licensee is deemed to have abandoned any further opportunity to be heard with regard to the proposed administrative action.

(d) If the parties cannot agree as to a resolution of the proposed administrative action, then the conference report shall so indicate. Where the Division and a licensee cannot reach a resolution of the proposed administrative action at the prehearing conference, the matter shall be transmitted to the Office of Administrative Law for a hearing pursuant to N.J.A.C. 1:1 unless there are no disputed material facts and no legal issues or any argument on those issues raised at the conference. In the event there is no resolution of the proposed administrative action at the prehearing conference and there are no disputed material facts and no legal issues or any argument on those issues raised at the conference, the Division shall notify the licensee that the matter shall not be transmitted to the Office of Administrative Law and the grounds thereof and shall notify the licensee that the proposed action shall become effective on such date as the Division shall specify. Such notice shall constitute the final agency decision in the matter.

13:19-1.13 Procedures as to when opportunities to be heard are granted

(a) The Division shall not take administrative action against a person unless it has first afforded the person an opportunity to be heard in conformity with this subchapter except as set forth in (b), (c), and (d) below.

(b) When the administrative action proposed by the Division against any person is one wherein the Division has authority to act without first providing an opportunity to be heard, such action shall be valid, but the Division shall promptly afford the person an opportunity to be heard in conformity with this subchapter.

(c) No hearing shall be provided when the action taken by the Division is required by any law which prescribes a suspension or revocation of a license or a privilege and which requires no exercise of discretion on the part of the Division of Motor Vehicles. No hearing shall be provided when a license or privilege is suspended or revoked by order of a court of competent jurisdiction.

(d) When a license is not suspended or is restored with the distinct understanding that any subsequent moving violation will be cause for a summary suspension, the issue of any hearing provided with respect to a proposed suspension for such subsequent moving violation will be limited to:

1. Whether or not the licensee has been convicted of a subsequent moving violation; and

2. Determining whether or not the licensee received adequate notice that this license had been restored with that distinct understanding.

13:19-12.2 Requests for hearings

(a) A licensee, or his or her attorney, may request a surcharge hearing in writing in accordance with the provisions of N.J.A.C. 13:19-1.

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(b) All requests for a surcharge hearing shall be sent to the following address:

State of New Jersey
Automobile Insurance Surcharge and Collections
CN 136
Trenton, New Jersey 08666-0136

13:19-12.3 (Reserved)

13:19-12.4 (Reserved)

13:19-12.5 (Reserved)

13:19-12.6 (Reserved)

13:19-12.7 (Reserved)

13:19-12.8 Abandonment of hearing

If the licensee does not request a hearing in accordance with the provisions of N.J.A.C. 13:19-1 regarding the initial surcharge bill, or thereafter abandons the hearing request, the licensee shall not be granted a hearing on future billings for the convictions contained within the initial surcharge bill.

13:19-12.9 Conference resolutions or final decisions

Any resolution at a prehearing conference conducted in accordance with N.J.A.C. 13:19-1 regarding a surcharge bill or any final administrative decision shall be conclusive as to the issues contained in that resolution or decision, and shall preclude any hearing on those issues on future billings.

(a)

DIVISION OF MOTOR VEHICLES

Equipment for Emergency Vehicles and Other Specified Vehicles

Adopted Amendments: N.J.A.C. 13:24-1.1, 2.3, 2.8, 4.1 and 5.5

Proposed: March 19, 1990 at 22 N.J.R. 902(a).
Adopted: March 18, 1991, by Stratton C. Lee, Jr., Acting Director, Division of Motor Vehicles.
Filed: March 19, 1991 as R.1991 d.205, **without change.**
Authority: N.J.S.A. 39:2-3, 39:3-43, 39:3-50, 39:3-54, 39:3-54.7 et seq. and 39:3-69.
Effective Date: April 15, 1991.
Expiration Date: September 27, 1994.

Opportunity to be heard with regard to the proposal was invited via notice published in the March 19, 1990 New Jersey Register. A media advisory was also prepared by the Division of Motor Vehicles with regard to the proposal. The period for public comment was extended by the March 23, 1990 media advisory until April 23, 1990.

The New Jersey Division of Motor Vehicles received four comments with regard to the proposal. These commenters were: Frances J. Dunston, M.D., M.P.H., State Commissioner of Health; Craig Underwood, Chief, Chatham Township Volunteer Fire Company; Richard Wright, Secretary, Tascack Valley Firemen's Association; and Ken Koenitzer, Legislative Chairperson, New Jersey State First Aid Council. The comments are available for inspection at the Office of the Director, Division of Motor Vehicles, 25 South Montgomery Street, 7th Floor, Trenton, New Jersey 08666. The comments were reviewed and considered by the Division.

One commenter had several comments pertaining to ambulances which are summarized below, along with the Division's responses.

COMMENT: The commenter agreed with the Division's proposed amendment of N.J.A.C. 13:24-4.1(b).

RESPONSE: The Division concurs with the commenter that the amendment of N.J.A.C. 13:24-4.1(b), which provides that any authorized emergency vehicle may be equipped with flashing amber lights facing to the rear of the vehicle as part of its roof-mounted emergency light bar (or which may be centered between the two rear-facing red upper corner lights on ambulances which qualify as authorized emergency vehicles) for use while the vehicle is stationary, is appropriate. The Division has accordingly adopted this proposed amendment.

COMMENT: The Division should change N.J.A.C. 13:24-2.3 to provide that whenever a siren is used, flashing warning lights should also be used. This would allow motorists to "see" where the siren sound is located. The regulation in question should contain language which clarifies light and siren use, such as: "At any time the siren is in use, warning lights must be operating."

RESPONSE: The Division perceives some merit in this comment. However, to avoid the necessity of republishing this proposal in the New Jersey Register due to substantive changes between proposal and adoption contrary to N.J.A.C. 1:30-4.3, the Division has not incorporated the commenter's requested change into N.J.A.C. 13:24-2.3 upon adoption. The Division will continue to consider the subject of this comment and the possibility of amending the provision in question in the future to accommodate this concern.

COMMENT: The Division's regulations should provide for the use of a front facing white flashing light on ambulances, as described in the Federal ambulance specification KKK-A-1822-C 3.8.2.1 ("Emergency Lighting System Configuration"). The clear light is mounted between the two front-facing red upper corner lights. Federally-funded tests show that clear flashing lights increase the vehicle's visibility to oncoming traffic during daylight hours. The following language would be appropriate for such a regulation: "Ambulances shall have a single flashing clear light, centered between the two front-facing red upper corner lights. The clear light shall be operated on a different switch than the red and amber lights. Such clear lights shall only be used when the vehicle is responding to an emergency call or when transporting a patient to a hospital on an emergency basis during daylight hours".

RESPONSE: As was the case with the immediately preceeding comment, the Division believes this comment contains some merit and warrants additional consideration. The Division has also reviewed the Federal ambulance specification forwarded by the commenter. However, to avoid the necessity of republishing this proposal in the New Jersey Register due to substantive changes between proposal and adoption contrary to N.J.A.C. 1:30-4.3, the Division has not made the commenter's requested change to its regulations upon adoption. The Division will continue to consider the issue raised by this comment in ascertaining possible future changes to its rules to address the concerns of the commenter on this topic.

Another commenter offered input which is summarized below, together with the Division's response.

COMMENT: The current blue light regulation should be left as it is. The proposed change, allowing use of a blue light when responding to a fire call from outside your town, will greatly increase the chance of an unsafe condition.

RESPONSE: The Division does not agree with this comment and has adopted the amendment of N.J.A.C. 13:24-5.5 as originally proposed. N.J.A.C. 13:24-5.5 as amended no longer contains a geographical limitation as to where blue emergency warning lights may be utilized by a volunteer firefighter or volunteer first aid or rescue squad member responding to an emergency call. The Division perceives this change to the rule in question to be entirely appropriate, since it is possible that a volunteer firefighter or volunteer first aid or rescue squad member responding to an emergency call may be required at some time to travel to a somewhat distant municipality outside the immediate geographical area of the municipality in which the blue light identification card (permit) was issued. The Division does not concur with the commenter that this change to the rule in question will cause an "unsafe condition"; rather, the change will assist volunteer firefighters or volunteer first aid or rescue squad members who are responsing to an emergency call.

Another commenter offered input which is summarized below, together with the Division's response.

COMMENT: The commenter agreed with the Division's proposed amendment of N.J.A.C. 13:24-5.5 removing geographical limitations on the use of blue lights, characterizing the change as a positive and beneficial one for the responding volunteers as well as for the people they are going to assist.

RESPONSE: The Division agrees with the commenter that the amendment of N.J.A.C. 13:24-5.5 is appropriate, and has therefore adopted the proposed amendment.

Several comments by another commenter are summarized below, followed by the Division's responses.

COMMENT: The commenter agreed with the Division's proposed amendment of N.J.A.C. 13:24-5.5 removing geographical limitations on the use of blue lights, but argued that a fire chief who may be responding to the scene of an emergency should have the ability to display his or

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her red light and siren whether he or she is within their venue or not. An increasing number of fire departments are opening their enrollments to neighboring communities, meaning that an increasing number of fire chiefs and/or their first assistant chiefs are living outside their jurisdictions. Fire departments are also quite often called upon to assist other jurisdictions in a request of mutual aid, and fire chiefs should not be required to turn emergency lights and sirens off when they leave their jurisdiction.

RESPONSE: The allowable use of red emergency warning lights by an active chief or first assistant chief of a volunteer fire company on a motor vehicle owned by him or her and registered to his or her name is set forth in N.J.S.A. 39:3-54.16, which provides that they may be operated "only while the vehicle is being used by the registered owner chief or first assistant chief in answering a fire or emergency call." The Division's regulation regarding red light usage, N.J.S.A. 13:24-2.8(h), likewise provides (aside from certain additional allowable uses not germane here) that red lights should be used only in response to a fire or emergency call. Neither of the foregoing provisions contains the geographical limitation which is alluded to by the commenter. Accordingly, the Division does not deem it necessary to change its aforementioned regulation regarding this issue.

The allowable use of sirens by an active chief or first assistant chief of a volunteer fire company on a motor vehicle owned by him or her and registered in his or her name is set forth in N.J.S.A. 39:3-54.17, which provides that such sirens may be operated "only while the vehicle is being used by the registered owner chief or first assistant chief in answering a fire or emergency call". The Division's regulation regarding siren usage, N.J.A.C. 13:24-2.9(b), likewise provides that sirens are for use while responding to an emergency call. Neither of the foregoing provisions contains the geographical limitation which is alluded to by the commenter. Accordingly, the Division does not deem it necessary to change its aforementioned regulation regarding this issue.

COMMENT: There should be a change in the allowable candlepower for blue lights. Presently, blue lights are limited to 51 candlepower. There are virtually no manufacturers that manufacture lights at this specification of 51 candlepower. A change in the allowable candlepower for blue lights would reflect both what is on the market and what is generally in use today.

RESPONSE: The Division cannot change its regulation regarding this subject (N.J.A.C. 13:24-5.4(c)) because such a change would be contrary to the statute which specifies the maximum allowable candlepower for blue emergency warning lights (N.J.S.A. 39:3-54.9). The controlling statute provides that such lights shall be equipped with a blue lens and "a lamp of not more than 51 candlepower." The Division's regulation, N.J.A.C. 13:24-5.4(c), merely reflects the statutory requirement of N.J.S.A. 39:3-54.9 as to the maximum allowable candlepower for such lights. Accordingly, since the statute in question is controlling as to the maximum allowable candlepower for such lights, the Division is precluded from changing its regulation regarding this subject. If the commenter believes the statute in question should be amended, he may wish to address his concerns to his State legislators rather than to the Division because statutory changes are a legislative rather than administrative manner.

COMMENT: There should be a change as to where blue lights may be mounted on a vehicle. Presently, blue lights must be placed below the headlights, on the windshield posts or on a particular area of the roof. The vast majority of lights manufactured are of the dashboard or multi-light (more than one flashing or revolving) roof-mounted type. A change as to where blue lights may be mounted on a vehicle would reflect both what is on the market and what is generally in use today.

RESPONSE: The Division cannot change its regulation regarding this subject (N.J.A.C. 13:24-5.4(a)) because such a change would be contrary to the statute which specifies where such lights may be placed on a motor vehicle (N.J.S.A. 39:3-54.10). The Division's regulation, N.J.A.C. 13:24—5.4(a), simply reflects the statutory requirements of N.J.S.A. 39:3-54.10 as to where such lights may be placed on a vehicle. The Division cannot establish by regulation additional locations on a vehicle where such lights may be placed because such additional locations are not specifically permitted by the controlling statute (N.J.S.A. 39:3-54.10). If the commenter believes the statute in question be amended, he may wish to address his concerns to his State legislators rather than to the Division because statutory changes are a legislative rather than administrative matter.

Full text of the adoption follows.

13:24-1.1 Words and phrases defined

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Authorized emergency vehicle" means a vehicle of the fire department, police vehicles and such ambulances and other vehicles as are approved by the Director of the Division of Motor Vehicles in the Department of Law and Public Safety, when operated in response to an emergency call. Any vehicle which is licensed as an ambulance by the New Jersey Department of Health in accordance with N.J.A.C. 8:40, and any ambulance of a volunteer first aid, rescue or ambulance squad which has been certified as qualified for emergency medical service programs in accordance with N.J.S.A. 27:5F-27, shall be considered approved as an authorized emergency vehicle for purposes of N.J.S.A. 39:1-1 and this chapter when operated in response to an emergency. Any vehicle bearing governmental registration, when being operated by a county medical examiner or his or her deputy or assistant to travel to the scene of a death in accordance with N.J.S.A. 52:17B-87, shall be considered approved as an authorized emergency vehicle for purposes of N.J.S.A. 39:1-1 and this chapter.

. . .

13:24-2.3 Siren, whistle or bell on vehicles

(a) No vehicle shall be equipped with, nor shall any person use upon a vehicle, any siren, whistle or bell with the following exceptions:

1. An authorized emergency vehicle may be equipped with a siren, whistle or bell to be utilized when such vehicle is operated in response to a fire or emergency call. Police vehicles may also use a siren, whistle or bell in pursuit of an actual or suspected violator of the law. Vehicles bearing governmental registration, when being operated by a county medical examiner or his or her deputy or assistant to travel to the scene of a death in accordance with N.J.S.A. 52:17B-87, may use a siren during such time of operation. A permit is not required for an authorized emergency vehicle equipped with a siren, whistle or bell.

2.-3. (No change.)

13:24-2.8 Red light mounting and use requirements

(a) (No change.)

(b) Any authorized emergency vehicle that displays roof-mounted red lights may be equipped with interior trunk-mounted flashing red emergency lights if the trunk obscures the roof lights when open.

(c)-(g) (No change.)

(h) Red lights shall only be used when the vehicle is being operated in response to a fire or emergency call; provided, however, that red lights mounted on a vehicle owned or leased by an organization engaged in the manufacture and/or sale of emergency vehicles or equipment for which a permit has been issued by the Director pursuant to N.J.A.C. 13:24-2.5(a)4 may only be used when such vehicle is being operated by an organization employee for the purpose of demonstration or delivery. Police vehicles may also use red lights in the pursuit of an actual or suspected violator of the law. Fire department vehicles may also use red lights while returning from an emergency call. Ambulances which qualify as authorized emergency vehicles pursuant to N.J.A.C. 13:24-1.1 may also use red lights when transporting a person to a hospital on an emergency basis. Vehicles bearing governmental registration, when being operated by a county medical examiner or his or her deputy or assistant to travel to the scene of a death in accordance with N.J.S.A. 52:17B-87, may use red lights during such time of operation.

13:24-4.1 Persons eligible

(a) (No change.)

(b) Notwithstanding any other provisions of this subchapter, any authorized emergency vehicle may be equipped with flashing amber lights which are displayed to the rear of the vehicle as part of its roof-mounted emergency light bar, or which may be centered between the two rear-facing red upper corner lights on ambulances which qualify as authorized emergency vehicles pursuant to N.J.A.C. 13:24-1.1, for use while the vehicle is stationary. A flashing amber light permit is not necessary when amber lights are mounted and used

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on an authorized emergency vehicle in such a manner. Such amber lights on an authorized emergency vehicle must be controlled by a switch separate from the red lights.

13:24-5.5 Use of blue emergency warning lights

(a) A blue emergency warning light shall only be used:

1. While the vehicle is responding to a fire or emergency call; and

2. On a motor vehicle owned by the identification card (permit) holder or by a member of his or her household.

(a)

LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF EXAMINERS OF ELECTRICAL CONTRACTORS

Notice of Administrative Correction
Fee Schedule

Adopted Amendment: N.J.A.C. 13:31-1.11

Take notice that the Division of Consumer Affairs has discovered an error in the notice of adoption for the amendment to N.J.A.C. 13:31-1.11, published in the March 18, 1991 New Jersey Register at 23 N.J.R. 879(a). In N.J.A.C. 13:31-1.11(a)1, the application fee was proposed to be changed from $25.00 to $50.00 (see 22 N.J.R. 22(a)). This change was adopted by the State Board of Examiners of Electrical Contractors (see R.1991 d.163), but was erroneously not shown in the publication of the notice of adoption. This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

13:31-1.11 Fee schedule

(a) The following fees shall be charged by the Board:

1. Application fee ..... [$25.00]**$50.00**
2. Initial licensure 100.00
3. Triennial license renewal 150.00
4. Initial business permit 25.00
5. Triennial business permit renewal 75.00

(b)

DIVISION OF CONSUMER AFFAIRS
BOARD OF NURSING

Application Fee for Certification as Homemaker-Home Health Aid

Adopted Amendment: N.J.A.C. 13:37-12.1

Proposed: January 7, 1991 at 23 N.J.R. 24(a).

Adopted: February 12, 1991, by the State Board of Nursing, Dorothy DeMaio, President.

Filed: March 14, 1991 as R.1991 d.193, **without change.**

Authority: N.J.S.A. 45:11-24.1; 45:1-3.2.

Effective Date: April 15, 1991.

Expiration Date: January 23, 1995.

The Board of Nursing afforded all interested parties an opportunity to comment on the proposed amendment to its fee schedule concerning the establishment of a $5.00 application fee for certification as a homemaker-home health aide. The official comment period ended on February 6, 1991. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on January 7, 1991 at 23 N.J.R. 24(a). Announcements were also forwarded to: the Star Ledger, the Trenton Times, the New Jersey State Nurses Association, the Home Health Assembly of New Jersey, the Home Care Council of New Jersey, the Home Health Services and Staffing Association of New Jersey, the New Jersey Hospital Association, the Licensed Practical Nurse Association, and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Nursing, 1207 Raymond Boulevard, Newark, New Jersey 07102.

Summary of Public Comment and Agency Response:

The New Jersey State Nurses Association submitted a letter in support of the proposed amendment.

Full text of the adoption follows.

13:37-12.1 Fee schedule

(a) (No change.)

(b) An applicant for a homemaker-home health aide certification shall pay a $5.00 fee at the time of application.

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EMERGENCY ADOPTION

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

New Jersey Care . . . Special Medicaid Programs Manual

Medicaid Eligibility

Pregnant Women and Children

Adopted Emergency Amendments and Concurrent Proposed Amendments: N.J.A.C. 10:72-1.1, 3.4, 4.1, 4.3, and 4.5

Emergency Amendments Adopted and Concurrent Proposed Amendments Authorized: March 26, 1991 by Alan J. Gibbs, Commissioner Department of Human Services.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): March 28, 1991.

Emergency Amendments Filed: March 28, 1991 as R.1991 d.223.

Authority: N.J.S.A. 30:4D-3, 30:4D-7, 7a, b, and c and 1902(a)(10)(A)(IV), 1902(1)(C) and (2)(B) of the Social Security Act.

Concurrent Proposal Number: PRN 1991-223.

Emergency Amendments Effective Date: March 28, 1991.

Emergency Amendments Operative Date: April 1, 1991.

Emergency Amendments Expiration Date: May 27, 1991.

Submit comments by May 15, 1991 to:
Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
CN-712
Trenton, New Jersey 08625

These amendments were adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of these emergency amendments are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted rule becomes effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)), if filed on or before the emergency period expiration date.

The agency emergency adoption and concurrent proposal follow:

Summary

Sections 1902(a)(10)(A)(IV), 1902(1)(C) and (2)(B) of the Social Security Act requires the State to provide Medicaid eligibility to pregnant women and children under the age of six whose family income is less than 133 percent of the Federal proverty guideline for the family's size. This requirement was included in the Omnibus Budget Reconciliation Act of 1989 and provided for an effective date of April 1, 1990. However, that act also provided that if a state required state legislation in order to implement this program expansion, implementation could be delayed.

The Department sought the advice of the Office of the Attorney General regarding New Jersey's need for state implementing legislation. That office advised that, the Department did, in fact, require legislation in order to adopt this program expansion. However, the required legislation has not yet been enacted. In the case of New Jersey, consequently, the Federal statutory provisions require that the implementation occur no later than April 1, 1991. Therefore, with the expiration of the grace period provided for in the Federal legislation, the primacy of Federal law holds forth, and the Department is adopting the now required coverage.

Under existing provisions, eligibility for pregnant women and children is limited. The State provides Medicaid eligibility to pregnant women and children under the age of two with family income less than 100 percent of the Federal poverty level. Children over the age of two are eligible only to the extent that the family's income does not exceed the income limits for AFDC. Therefore, under current rules, a pregnant woman with one child is eligible only if the family's countable income is less than $928.00 monthly. Under these new rules, that pregnant woman would be eligible so long as the family's income does not exceed $1,234. As under existing rules, pregnant women determined eligible under the new higher income standards will remain eligible for the period ending 60 days following the end of her pregnancy regardless of changes in her income. This assures continued prenatal and postnatal care even if her income increases above the income standard during the course of her pregnancy.

For children between the ages of two and six, assuming a family size of three, a child's family's countable income could not exceed $488.00 monthly. Under these new rules, such a child would be eligible so long as the family's income does not exceed $1,234.

Social Impact

It is estimated that this program expansion will increase the Medicaid caseload by 1,132 pregnant women and 20,381 children. It is expected that this expansion of Medicaid will have a significant affect on health care access for low income pregnant women and children. This should manifest itself in a decrease in prenatal problems and improved birth outcomes. The expansion of eligibility for children provides an avenue for increased early medical intervention which should result in an overall improvement in the short and long-term health of the newly eligible children and, therefore, a long-term reduction in health care costs.

Economic Impact

The additional estimated annualized cost of the increased number of pregnant women expected to enroll in the Medicaid program is $7,390,000, 50 percent of which will be borne by the Federal government. The increased costs associated with the anticipated additional children participating in the program is estimated at $20,667,000 which will also be subject to a 50 percent match from the Federal government.

Regulatory Flexibility Analysis

The proposed amendments impose no additional recordkeeping, reporting or other compliance requirements on Medicaid providers or other small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments do impact the county welfare agencies charged with the responsibility of certifying Medicaid eligibility for the newly expanded eligible population. Therefore, a regulatory flexibility analysis is not required.

Full text of the emergency adopted and concurrent proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

10:72-1.1 Program scope

(a) This chapter contains the criteria for Medicaid eligibility for certain pregnant women and children not eligible under the provisions of N.J.A.C. 10:81 and 82, as well as, certain aged, blind, and disabled persons not eligible under the provisions of N.J.A.C. 10:71. [The provisions of this chapter relating to pregnant women and children are effective July 1, 1987. The provisions of this chapter relating to the aged, blind, and disabled are effective October 1, 1987.]

1. and 2. (No change.)

(b) Medicaid eligibility under the provisions of this chapter is limited to:

1. Pregnant women; and

2. Children **under the age of six years.** [of the following ages (see N.J.A.C. 10:72-3.4(a)4 and 5 for protected eligibility for children reaching the age limits):

i. Through September 30, 1987, children under the age of one year; and

ii. Effective October 1, 1987, children under the age of two years.]

3. [Effective October 1, 1987, aged] **Aged**, blind, and disabled individuals (as defined by Title XIX of the Social Security Act). For purposes of this chapter, an aged individual is a person who is 65 years of age or older.

(c) Retroactive Medicaid eligibility is available beginning with the third month prior to the month of application for Medicaid for any month during which the applicant meets all eligibility criteria and during which the applicant has unpaid medical expenses for covered services. In order to qualify for retroactive coverage, an individual need not be determined eligible at the time of application for Medi-

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caid benefits. Application for retroactive Medicaid coverage may be made on behalf of a deceased person so long as the person was alive during a portion of the three-month period immediately prior to the month of application and he or she has unpaid medical expenses for Medicaid covered services.

i. Retroactive Medicaid coverage is not available under the provisions of this chapter for [pregnant women and children for any period prior to July 1, 1987 and for aged, blind, and disabled individuals for any period prior to October 1, 1987.] **children aged two through five whose family's income exceeds the AFDC income standard (see N.J.A.C. 10:82-1.2(c)) or for pregnant women and children under the age of two whose family's income exceeds 100 percent of the poverty level for any period prior to April 1, 1991.**

10:72-3.4 Eligible persons

(a) The following persons who meet all eligibility criteria of this chapter are eligible for Medicaid benefits:

1. (No change.)

2. Children **under the age six years.** [of the following ages:

i. Through September 30, 1987, children under the age of one year; and

ii. Effective October 1, 1987, children under the age of two years;]

3. (No change.)

[4. A child under the age of one year for whom application is made and who is eligible prior to October 1, 1987 and before his or her first birthday will be deemed to meet the age requirement until October 1, 1987.]

Recodify existing 5 through 8 as **4 through 7.** (No change in text.)

10:72-4.1 Income eligibility limits

(a) Income limits for Medicaid for **aged, blind, and disabled** persons covered under the provisions of this chapter will be based on 100 percent of the poverty income guidelines as defined by the U.S. Department of Health and Human Services in accordance with sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 (Pub.L. 97-35). The monthly income standard will be one-twelfth of the **annual** poverty income guideline rounded down to the next whole dollar amount for [each] household unit sizes **of one and two.** The annual revision to the Federal poverty income guideline will be effective for purposes of this [chapter] **section** with the first [month beginning 30 days after publication of the poverty line in the Federal Register by the Department of Health and Human Services] **day of the year for which the poverty income guideline is promulgated.**

(b) Income limits for pregnant women and the children covered under the provisions of this chapter shall be based on 133 percent of the poverty income guideline as defined by the Department of Health and Human Services in accordance with sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35). The monthly income standard will be one-twelfth of 133 percent of the annual poverty income guideline rounded down to the next whole dollar amount for each household size. The annual revision to the Federal poverty income guideline will be effective for purposes of this section will be the first day of the year for which the poverty income guideline is promulgated.

[(b)]**(c)** In order to be eligible for Medicaid benefits under the provisions of this chapter, monthly household income (as determined by this chapter) must be equal to or less than the income limit established in (a) **or (b)** above **as applicable**.

1. (No change.)

2. With the exception in [(b)] **(c)**1 above, income eligibility exists for each month in which the household unit's income is equal to or less than the income limits.

10:72-4.3 Countable income; pregnant women and [infants] **children**

(a) Except as specified below, countable income for pregnant women and [infants] **children** under the provisions of this chapter shall include the income of all members of the household unit as determined at N.J.A.C. 10:72-3.5(a)1 and 2, and shall be determined in accordance with regulations applicable to income in the AFDC-C program (see N.J.A.C. 10:82).

1.-4. (No change.)

(b)-(d) (No change.)

10:72-4.5 Resource eligibility

(a) Pregnant women and [infants] **children** seeking Medicaid benefits under the provisions of this chapter are eligible without regard to the value of the household unit's resources. The county welfare agency shall inquire about the household unit's resources only in order to establish income that may result from the household unit's resources.

(b) (No change.)

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PUBLIC NOTICES

EDUCATION

(a)

STATE BOARD OF EDUCATION

Notice of Public Testimony Session May 15, 1991

Take notice that the following agenda items are scheduled for Notice of Proposal in the May 6, 1991 New Jersey Register and are, therefore, subject to public comment. Pursuant to the policy of the New Jersey State Board of Education, a public testimony session will be held for the purpose of receiving public comment on Wednesday, May 15, 1991 from 4:00 P.M. to 6:00 P.M. in the State Board Conference Room, Department of Education, 225 West State Street, Trenton, New Jersey.

To reserve time to speak, call the State Board Office at (609) 292-0739 by 12:00 noon Friday, May 10, 1991.

Rule Proposals: N.J.A.C. 6:41, 47, 48, 49, 50 and 52, Vocational Code Repeals; N.J.A.C. 6:43, 46 and 51, Vocational Code Amendments; N.J.A.C. 6:22, Facilities Planning Code Amendments; N.J.A.C. 6:39, Amendments to Statewide Assessment; and N.J.A.C. 6:30, Amendments to Adult Education.

Please note: Publication of the above items are subject to change depending upon the actions taken by the State Board of Education at the April 3, 1991 monthly public meeting.

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF PARKS AND FORESTRY

Notice of Public Hearing

Proposed Sale and Acquisition of Land Comprising Part of the Delaware and Raritan Canal State Park

Take notice that the State of New Jersey, Department of Environmental Protection by the Division of Parks and Forestry, will hold a **public hearing** to seek comment on the proposed sale of the following State-owned land to Trap Rock Industries:

(1) All that certain land containing approximately 5.3 acres commonly known as the Rockingham Historic Site on county route 518 and designated as Lot 26, Block 8 on the current Tax Map of the Township of Franklin, County of Somerset, State of New Jersey appraised at $100,000; and

(2) All that certain land containing approximately 0.328 acres of land comprising part of the D & R Canal State Park and designated as part of Lots 2 and 9, Block 1 on the current Tax Map of the Township of Franklin, appraised at $500.00.

The Rockingham historic house has been moved twice in its history. The present site has no association with the events contributing to the historical significance of Rockingham. The Rockingham State Historic Site is a very significant 18th Century house which served as General George Washington's last military headquarters during the Revolutionary War.

The Department proposes to purchase from Trap Rock Industries a larger and more appropriate site for Rockingham containing approximately 27.8 acres and designated as part of Lots 9 and 11, Block 1 and all of Lot 12, Block 1 on the current Tax Map of the Township of Franklin. The proposed new site for Rockingham is located between the proposed relocated county route 603 and the D & R Canal. These parcels are appraised at $105,000 and $130,000, respectively.

The public hearing will be held on:

Monday, April 29, 1991 at 7:30 P.M. at the
Franklin Township Municipal Building
475 Demott Lane
Somerset, New Jersey

Persons wishing to make oral presentations are asked to limit their comments to a three to five minute time period. Presenters should bring a copy of their comments to the hearing for use by the Department. The hearing record will be kept open for the period of seven days following the date of the public hearing so that additional written comments can be received.

Interested persons may submit written comments until **May 6, 1991** to:

Gregory A. Marshall, Director
Division of Parks and Forestry
Department of Environmental Protection
CN-404
Trenton, New Jersey 08625

(c)

DIVISION OF WATER RESOURCES

Amendment to the Northeast Water Quality Management Plan

Public Notice

Take notice that an amendment to the Northeast Water Quality Management (WQM) Plan has been proposed. This amendment would adopt a Wastewater Management Plan (WMP) for the Joint Meeting of Essex and Union Counties (Joint Meeting). The WMP provides for a 20 year projected wastewater flow of 78.17 million gallons per day to be treated by the Joint Meeting's sewage treatment plant and delineates a sewer service area for that facility. WMP responsibility for the portions of East Orange, Newark, and Orange which are in the Passiac Valley Sewerage Commissioners (PVSC) district, but served by the Joint Meeting is transferred from the PVSC to the Joint Meeting. WMP responsibility for the portions of Roselle Park which are in the Rahway Valley Sewerage Authority (RVSA) district, but served by the Joint Meeting, is transferred from the RVSA to the Joint Meeting. WMP responsibility for the portions of Livingston Township served by the Joint Meeting, is transferred from Livingston Township to the Joint Meeting. Notwithstanding N.J.A.C. 7:15-5.11(b), upon adoption of this WMP, the Joint Meeting will not assume WMP responsibility for any part of New Providence identified as within the Joint Meeting sewer service area. New Providence will remain as the WMP agency for New Providence.

This notice is being given to inform the public that a plan amendment has been developed for the Northeast WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Bureau of Water Quality Planning at (609) 633-7026.

Interested persons may submit written comments on the amendment to Mr. Ed Frankel, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested persons may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this public notice to Mr. Frankel at the NJDEP address cited above. If a public hearing for the amendment is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(d)

DIVISION OF WATER RESOURCES

Amendment to the Upper Delaware Water Quality Management Plan

Public Notice

Take notice that on March 21, 1991, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an

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amendment to the Upper Delaware Water Quality Management Plan was adopted by the Department. This amendment adopts a Wastewater Management Plan (WMP) for Alexandria Township (Township), Hunterdon County. Several wastewater treatment plants are proposed. On-site groundwater disposal treatment facilities are proposed for the Crescent Hill Estates and The Hamlet at Alexandria residential developments. Treatment facilities utilizing groundwater discharge are proposed for the Pittstown, Little York, Alexandria Field, Sky Manor Airport, and the southern area of the Township along Routes 513 and 619. A surface water discharge facility is proposed for the Everittstown area. Remaining portions of the Township are designated to be served by non-surface discharge facilities having design capacities of less than 2,000 gallons per day.

(a)

DIVISION OF WATER RESOURCES

Amendment to the Upper Delaware Water Quality Management Plan

Public Notice

Take notice that an amendment to the Upper Delaware Water Quality Management (WQM) Plan has been submitted for approval. This amendment is to identify a proposed on-site groundwater disposal facility to replace and expand the existing Frelinghuysen Elementary School wastewater treatment facility in Frelinghuysen Township, Warren County. The proposed facility will be sized to accommodate 401 persons.

This notice is being given to inform the public that a plan amendment has been proposed for the Upper Delaware WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 3rd Floor, 401 East State Street, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to Mr. Barry Chalofsky, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 10 working days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 10 working days of this public notice to Mr. Chalofsky at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(b)

DIVISION OF WATER RESOURCES

Amendment to the Upper Delaware Water Quality Management Plan

Public Notice

Take notice that an amendment to the Upper Delaware Water Quality Management (WQM) Plan has been submitted for approval. This amendment would expand the sewer service area of the Town of Phillipsburg Sewage Treatment Plant to include Block 78, Lot 1 (Warren Business Park).

This notice is being given to inform the public that a plan amendment has been developed for the Upper Delaware WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Bureau of Water Quality Planning at (609) 633-7026.

Interested persons may submit written comments on the amendment to Mr. Ed Frankel, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment (or extend the public comment period in this notice up to 30 additional days). These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of the date of this public notice to Mr. Ed Frankel at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(c)

DIVISION OF WATER RESOURCES

Amendment to the Upper Raritan Water Quality Management Plan

Public Notice

Take notice that an amendment to the Upper Raritan Water Quality Management (WQM) Plan has been submitted for approval. This amendment would allow for the expansion of the Township of Bedminster wastewater treatment plant (WTP) sewer service area to include Block 34, Lot 9, on which the present school is located, and Block 36, Lot 1.01 and a portion of Lot 1, on which a new proposed elementary school is to be constructed. The existing school is presently served by the WTP.

This notice is being given to inform the public that a plan amendment has been proposed for the Upper Raritan WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 3rd Floor, 401 East State Street, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Bureau of Water Quality Planning at (609) 633-7026.

Interested persons may submit written comments on the amendment to Mr. Ed Frankel, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 10 working days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within ten working days of this public notice to Mr. Ed Frankel at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(d)

DIVISION OF WATER RESOURCES

Amendment to the Monmouth County Water Quality Management Plan

Public Notice

Take notice that on March 13, 1991, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Monmouth County Water Quality Management Plan was adopted by the Department. This amendment is for a spray irrigation treatment system and service area to serve a proposed 130-home golf course community and clubhouse that will be located in Marlboro Township. The planned wastewater flow will be 50,000 gallons per day (GPD). This area is presently designated in the Western Monmouth Utilities Authority Wastewater Management Plan as being served by individual subsurface/disposal systems less than 2,000 GPD.

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(a)

DIVISION OF WATER RESOURCES

Amendment to the Monmouth County Water Quality Management Plan

Public Notice

Take notice that an amendment to the Monmouth County Water Quality Management (WQM) Plan has been submitted for approval. This amendment proposes the designation of the site of Cedar Hollow Estates Townhouse Complex (Block 801, Lot 2) in Wall Township as a non-surface discharge (less than 20,000 gallons per day) service area to serve the 11 unit complex. Two on-site subsurface disposal systems are proposed to treat a projected wastewater generation of 3,300 gallons per day. The project site is within the service area of the South Monmouth Regional Sewerage Authority and will be required to tie into the sewer system when available.

This notice is being given to inform the public that a plan amendment has been proposed for the Monmouth County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, Third Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Bureau of Water Quality Planning at (609) 633-7026.

Interested persons may submit written comments on the amendment to Mr. Ed Frankel, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this public notice to Mr. Ed Frankel at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(b)

DIVISION OF WATER RESOURCES

Amendment to the Ocean County Water Quality Management Plan

Public Notice

Take notice that an amendment to the Ocean County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would approve a Wastewater Management Plan for Little Egg Harbor Township. The plan delineates the limits of the existing sewer service areas, proposed sewer service areas, individual subsurface sewage disposal areas, as well as parks, preserves, and other environmentally sensitive areas. The wastewater flows are treated at the Ocean County Southern Wastewater Pollution Control Facility.

This notice is being given to inform the public that a plan amendment has been proposed for the Ocean County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the Ocean County Planning Board, Court House Square, CN-2191, Toms River, New Jersey 08754; and the NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 3rd Floor, 401 East State Street, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling either the Bureau of Water Quality Planning at (609) 633-7026 or the Ocean County Planning Board at (201) 929-2054.

Interested persons may submit written comments on the amendment to Mr. Ed Frankel, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 working days of this public notice to Mr. Ed Frankel at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(c)

DIVISION OF WATER RESOURCES

Notice of Adoption of 1990-91 New Jersey Pollutant Discharge Elimination System (NJPDES) Annual Fee Report and Fee Schedule

Take notice that the Department of Environmental Protection (Department) hereby adopts the 1990-91 Annual Fee Report and Fee Schedule (Annual Fee Report). In accordance with N.J.A.C. 7:14A-1.8, publication of this notice marks the completion of the 1990-91 budgeting process.

The Department held a public hearing on January 24, 1991 at the Records Storage Center, 2300 Stuyvesant Avenue, Trenton, New Jersey. The public hearing was attended by 25 people. Oral testimony was provided by 10 people. The public comment period closed on January 28, 1991. Written comments were submitted by 38 people. The following is a list of those persons that provided written and oral comments concerning the proposed amendments to N.J.A.C. 7:14A-1.8, the Annual Fee Report, general comments concerning the fee assessment methodology, the proposed budget, actual expenditures, program goals and accomplishments to the Department:

Richard Ellison	Monmouth County Bayshore Outfall
Barry Sams	NL Industries
Bertram Barron	Servometer Corporation
Joseph Mink	Campbell-Pratt Oil Company
Stuart Cooper	Caschem, Inc.
George Inglessis	Frinton Laboratories
Richard Hampson	Garden State Paper Company
Robert Holland	Ocean County Utilities Authority
Barry Clark	Cumberland County Utilities Auth.
Mario Guarriello	OTI Oxford Textile
Renee Bobal	Hoffmann-LaRoche
Will Martin	Martin Corporation
Harry Lewis	Struthers-Dunn
John Sandstedt	Sybron Chemicals
Hal Bozarth	Chemical Industry Council (CIC/NJ)
J.T. Wharton	Air Products and Chemicals
Ellen Gulbinsky	Assoc. of Environmental Authorities
Jerome Sheehan	Bergen County Utilities Authority
Michael Hart	Carpenter Technology Corporation
A. Michael Fernandez	Cumberland County Utilities Auth.
Albert Boettler	Dupont
Alfred Pagano	Dupont
Marwan Sadat	for Edgeboro Disposal
Timothy Gardner	Four Star Products
Marwan Sadat	for Metec, Inc.
Angel Chang	Safety-Kleen
Marwan Sadat	for Square D
Robert Collins	Monmouth County Chosen Freeholders
Marwan Sadat	for Wentzel Tile
Judith B. Appel, Esq.	for West New York and Kearny
Sandra Grenci	Rahway Valley Sewerage Authority
Carmine Catalana, III	Cumberland Dairy
Robert Ranieri	Hoboken Union City Weehawken S.A.
J.A. Shissias	Public Services Electric and Gas
Ezra Bixby	Stony Brook Regional Sewerage Auth.
William Goelzer	Landis Sewerage Authority
Herbert Bennett	Struthers-Dunn
William MacNair	Air Products and Chemicals
Eric Lindhult	Dames & Moore
Vernon Brikowski	Neptune Township S.A.
James A. Dolan	Neptune Township S.A.
John Gulliford	Methode Electronics
Richard W. Watson	Birdsall Engineering
Julius P. Rakus	Alpha Chemicals and Plastics

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Debra Hammond, Administrative Analyst I, Division of Water Resources, Department of Environmental Protection, served as hearing officer at the January 24, 1991 public hearing on the 1990-91 Annual Fee Report and Fee Schedule. After reviewing the testimony presented at the public hearing Debra Hammond recommended that the Department adopt the 1990-91 Annual Fee Report and Fee Schedule as modified by the Department to reflect the reductions in the costs associated with vacant positions and the implementation of the Clean Water Enforcement Act. Leroy Cattaneo, Deputy Director, and James Mumman, Deputy Director, Division of Water Resources and John S. Keith, Assistant Commissioner, Environmental Management and Control have reviewed the hearing officer's report and concur with the hearing officer's recommendations.

Ms. Hammond recommended that the Department reevaluate the projected costs for vacant positions and the implementation of the Clean Water Enforcement Act and adopt a reduced NJPDES program budget and fee schedule. Ms. Hammond also recommended that the Department develop a priority system to ensure that ground water remediation projects which require Treatment Works Approvals (TWAs) and discharge to surface water permits are not unnecessarily delayed.

The Department accepts the recommendation to reduce the 1990-91 NJPDES budget. The Department has reduced the budget for 1990-91 to $19.2 million. This reduction reflects the projected costs to be incurred in FY91 for newly filled vacant positions and the newly established Clean Water Enforcement Act positions.

Ms. Hammond's recommendations are set forth in more detail in the hearing officer's report. A copy of the record of the public hearing, which includes the hearing officer's report, is available upon payment of the Department's normal charges for copying. Persons requesting copies should contact:

Samuel A. Wolfe, Esq.
Department of Environmental Protection
Office of Legal Affairs
401 East State Street
CN 402
Trenton, New Jersey 08625

Many of the comments received concerned individual NJPDES permit fee assessments. The Department has included and responded to those comments which address either the 1990-91 Annual Fee Report or the NJPDES fee schedule rule in N.J.A.C. 7:14A1-1.8. The Department will respond directly to those permittees with specific questions or errors concerning their individual fee assessment. The Department will also be reviewing the environmental calculations for NJPDES permittees to ensure that fee assessments reflect the calculated environmental impact. The Department has provided responses to the comments received which pertain to the Department's proposed amendments to N.J.A.C. 7:14A-1.8 in this issue of the New Jersey Register.

Summary of Public Comments and Agency Responses

COMMENT: The commenter objects to the Department's fee assessment methodology, and considers these fees to be excessive, unfairly applied, and scientifically flawed.

RESPONSE: Pursuant to Section 9 of the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.), the Department is authorized to "establish and charge reasonable annual administrative fees, which fees shall be based upon, and shall not exceed the estimated cost of processing, monitoring and administering the NJPDES permits." The existing and proposed amendments to the Department's fee assessment methodology reflects the opinion of the Appellate Division of the New Jersey Superior Court in *Public Service Electric and Gas v. Dep't of Environmental Protection*, 193 N.J. Super. 676 (App. Div. 1984), aff'd 101 N.J. 95 (1985) and *GAF Corp. v. New Jersey Dep't of Environmental Protection*, 214 N.J. Super. 446 (App. Div. 1986), that the fee schedule assess a greater portion of the costs associated with the NJPDES program to those facilities which create the need for regulation. The Department has established a fee schedule which distributes costs based on the quantity of pollutants discharged and the overall environmental impact of the discharge.

COMMENT: Major inequities still exist in the cost-sharing system of the NJPDES fee program. While attempts have been made to distribute the costs to those dischargers who contribute the greatest "environmental impact," it is still unclear how the excessive fees listed in the 1990-91 fee schedule can be justified in terms of the amount of NJPDES-related activities associated with these facilities. Fee increases of several hundred to several thousand percent over the past several years for some dischargers cannot by any means be correlated with similar increases in associated NJPDES discharger activities or substantial changes in the discharger's environmental impacts.

RESPONSE: Significant changes have occurred over the past few years which have effectively increased NJPDES permit fees for larger wastewater discharges. First, the quality of wastewater being discharged in the state has improved dramatically. Poorly treated wastewater has been redirected from primary treatment plants to larger regional facilities. Further complicating the fee assessment process, was the Department's decision to phase out the cube root factor in 1987. The Department has acknowledged that this factor had the effect of distributing a disproportionate share of the NJPDES program costs to small and/or efficient dischargers. The proposed fees for 1990-91 are based on the actual pollutant loadings discharged without the benefit of a cube root or square foot function. Finally, the cost to administer the NJPDES permit program has increased from $16 million in FY89 to $22.4 million in FY91. The proposed FY91 budget includes $2.4 million to implement the requirements of the Clean Water Enforcement Act. The Department has evaluated the budget requirements for FY91 and has reduced the budget and fee schedule accordingly.

COMMENT: Appendix D provides a listing of titles funded through the NJPDES program. Appendix G provides an organization chart for the Department. The commenter wants to know which specific titles in the organization are being funded.

RESPONSE: Appendix D lists 217 filled titles funded directly from the NJPDES Surface Water and Ground Water accounts. Throughout the fiscal year, approximately 400 people may perform NJPDES eligible work activities. In total, the work years completed and the salary cost incurred by all Division staff is approximately equal to the number of positions funded from the NJPDES account and the actual salary costs expended. The work plan provided in Appendix E of the Annual Fee Report indicates the number of work years associated with each major work task by budget category (municipal, industrial, pretreatment, landfill, and ground water).

COMMENT: Appendix D does not show any fees proposed for the Director or Deputy Director positions. Does this mean that NJPDES fees do not fund these positions?

RESPONSE: As stated above, only those positions listed in Appendix D are paid directly from fees. However, eligible work efforts are included in the determination of the actual costs incurred. NJPDES fees may be used to reimburse another account.

COMMENT: A commenter requested that the Department define a "work year" and the hours worked by Department personnel.

RESPONSE: All professional staff work a 40 hour work week which is 2080 hours per year. It must be noted that approximately 25 percent of the time will be incurred on non-output generated time such as vacation, sick leave, jury duty, training, holidays and other types of benefit time.

COMMENT: A commenter requested that the Department provide a brief description of several unclear work tasks listed in Appendix E including Technical Support—Biomonitoring, POTW oversight, TMDL's and Water Quality Assessment, Storm Water and CSO Technical Support, Surface Water Quality Standards, 304(l) Sampling, and Bioassay testing.

RESPONSE: The activities mentioned above have been determined by the Department to be required in the processing, monitoring and administering of NJPDES permits. The following is a brief description of each task:

1. Technical Support Biomonitoring—NJPDES permittees are required through NJPDES permits to conduct whole effluent toxicity testing or biomonitoring to determine compliance with the established permit limitation. Division staff review self-monitoring bioassay results, and determine the need to implement toxicity reduction evaluations (TRE's). TREs are a structured approach provided in the NJPDES permit to bring a discharge into compliance with the established whole effluent toxicity limitation.

2. POTW oversight—The Division has delegated to certain qualifying Publicly Owned Treatment Works (POTW) through their NJPDES permits the responsibility to issue permits to significant indirect users (SIU's). The Division must review the Annual Audit reports to determine compliance with NJPDES permit requirements.

3. Total Maximum Daily Load's and Water Quality Assessments—In accordance with the 1987 amendments to the Federal Clean Water Act, the Division must complete water quality assessments of the states streams and rivers to evaluate the achievement of Water Quality Standards and to establish priorities for dischargers needing water quality

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based effluent limitations. Segment-wide TMDL's are calculated and used by the Division to establish NJPDES water quality based effluent limitations.

4. Stormwater and Combined Sewer Overflow Technical Support—The Federal Clean Water Act requires that the Department issue permits for the pollutant discharges from CSO's and to expand the permitting program for stormwater runoff.

5. Surface Water Quality Standards—The Department is required to promulgate water quality standards. Segment-wide total maximum daily loads based on established water quality standards are used to develop individual water quality based effluent limitations.

6. 304(L) Sampling—Section 304(L) of the Federal Clean Water Act requires the Department to control the discharge of toxic pollutants through NJPDES permits. The Division, through the New Jersey Geological Survey, conducts intensive stream and discharge monitoring programs to generate water quality and discharge data to assist the Planning and Standards Element in evaluating water quality and calculating TMDL's, which are then used by the Wastewater Facilities Management Element to establish discharge limits.

7. Bioassay Testing—The New Jersey Geological Survey performs compliance bioassay testing for the Division of Water Resources to ascertain whether the discharger is in compliance with the whole effluent toxicity limit established in their NJPDES permit.

8. Program Development/Regulations—This is a generic work task for all budget categories within the NJPDES program. As necessary, the Division must incorporate new State and Federal requirements into the NJPDES permit program and the NJPDES rules.

9. UIC Class V—Well Inventory and Permits—In accordance with the NJPDES rules, the Department must permit Class V wells. The Department must inventory potential users of Class V wells to determine whether an alternative disposal method is available. Where necessary, the Department will issue NJPDES ground water discharge permits.

COMMENT: The Department has included proposed expenditures for the FY91 budget in Appendix F for OTIS data processing, Professional Services and Temporary Services. What are these operating expenses for?

RESPONSE: The Department has provided the estimated cost for several types of professional services. The Division of Water Resources contracts with the Office of Telecommunications and Information Systems (OTIS) for data processing services including program development and maintenance of the NJPDES database, and the operation of the NJPDES database. The NJPDES program is also assessed a share of the costs associated with Department level personnel systems and the overall operation of computer hardware. The estimated cost to the NJPDES program in FY91 is $684,000. Professional services includes the costs associated with court stenographers for public hearings and adjudicatory hearings, room rentals for public hearings on NJPDES permits, transcription costs, and other miscellaneous categories of professional services that may be required for the NJPDES program. In FY91, $208,100 has been budgeted. The Division has relied on temporary services to perform clerical and data entry work as a result of hiring freezes which have prevented the Division from filling vacancies. Also, the Department has a difficult time recruiting, hiring, and retaining good clerical help. The Department receives a significant volume of discharge and ground water quality data through the self-monitoring provision of the NJPDES permit program. A total of $309,049 has been budgeted for temporary services in FY91.

COMMENT: The Department uses several terms in Appendix G to calculate program expenditures for FY89 and FY90. Please define the terms: Direct coding, Category percent, Administrative cost, Related costs, Treasury Assessment, Cost—Revenue.

RESPONSE: Appendix G summarizes the program expenditures for FY89 and FY90 for the Ground Water and Surface Water programs. A brief explanation of these terms is provided on pages 11 through 13 of the 1990-91 Annual Fee Report. Department staff complete a biweekly time report indicating the number of hours worked by project activity code in accordance with Department's policies and procedures. Project activity codes have been established for all types of work activities by program. In the NJPDES program, each facility and discharge category regulated through the NJPDES permit is assigned a unique project activity code. All Department staff use the same project activity codes for generic activities such as sick, vacation, etc. Every bureau has a unique working cost center, so that these generic activities can be associted with a bureau/program. In FY91, the Department is in the process of replacing facility specific project activity codes with project activity codes based upon the work activities described in the FY91 NJPDES work plans listed in Appendix E.

1. Direct coding represents the time charged directly to a specific NJPDES facility and category of discharge. Category percent is the percentage of direct coding charged to NJPDES facilities associated with the budget categories. For the NJPDES program, $2,472,661 was charged to project activity codes for specific NJPDES sites and discharge categories. This percentage is used to distribute other salary (Administrative and Related Costs) and non-salary costs which can not be associated with the specific discharge category.

2. Administrative costs include the time charged to generic NJPDES project activity codes such as NJPDES program administration, NJPDES budgeting and fees, NJPDES ground water data management, and NJPDES management and clerical. The total costs charged to these project activity codes in FY90 was $4 million. Lacking a specific NJPDES facility or category of discharge, these costs are allocated to each budget category based upon the "category percent."

3. Related costs included the time coded to non-output related benefit time such as vacation, sick leave, training, etc. It should be noted that the NJPDES program is charged a percentage of these costs based upon the percent of staff time charged to direct coding and administrative coding as related to the total costs incurred.

4. In FY90, the Department of Environmental Protection was provided $10 million from the State budget. The Department of Treasury appropriated $9.2 million as an advance to operate the NJPDES program but required the full $10 million to be repaid by the NJPDES program. This is in effect a $800,000 assessment by the Department of Treasury to the NJPDES program.

5. In accordance with Section 9 of the Water Pollution Control Act, the Department is authorized to assess and collect annual permit fees to cover the cost of the NJPDES permit program. Each year, the Department must compare the revenue collected against the billings for that year with the actual expenditures for the program to determine if a refund should be issued to NJPDES permittees. Where the Department has collected permit fees in excess of costs incurred, a credit is issued against future billings. The term Cost—Revenue is the difference between these two factors and indicates whether a credit is due.

COMMENT: One commenter stated that the proposed fee structure does not necessarily assess higher fees against these responsible for ground water contamination. The concept of having the "polluter pay" makes sense for permits which regulate an on-going discharge activity.

RESPONSE: Permitted facilities with active discharges to ground water in compliance with the condition of their NJPDES permit do not cause significant ground water quality impacts as compared to older, unregulated activities.

COMMENT: Several commenters stated that the comment period should be extended to comply with the spirit of the Administrative Procedure Act which requires a sincere and diligent effort to secure the comments from the public by the regulatory agency.

RESPONSE: The Department believes that it has complied with the spirit of the Administrative Procedure Act. This rule amendment was initiated though a pre-proposal in the New Jersey Register on June 4, 1990 and a public hearing held on July 6, 1990. Interested parties had ample opportunity to submit comments to the Department on the proposed rule. The Department accepted written and oral comments on the pre-proposal in July 1990 and also during the public hearing and comment period on the rule proposal in January 1991. The Department did not feel that extending the comment period on the rule amendment would result in any additional comments. Furthermore, many of the comments concerned the proposed budget for FY91 and site-specific application which would not affect the Department decision to adopt.

COMMENT: The NJPDES Fee Schedule is not the proper mechanism for furthering the Department of Environmental Protection's policy goals. There appears to be a basic misapplication of the statute in further encumbering the existing fee structure with items related to the pursuit of policy goals which may or may not be related to the costs of administering the NJPDES permit program.

RESPONSE: The goals of the Department are to protect and enhance the water quality of the waters of the State and to attain fishable and swimmable goals of the State Act wherever possible. The NJPDES fee schedule is based upon a proposed budget which reflects the costs of administering, processing, and monitoring NJPDES permits. The methodology selected by the Department to distribute NJPDES program costs is based on environmental impact. Any benefit to the environment as a result of the fee schedule is incidential but desirable.

COMMENT: If a program of taxation is to be undertaken under any statute, there should be ample opportunity to evaluate economic impact

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of the program. By skewing NJPDES permit fees towards activities which are purported to be more toxic producing, it is quite likely that those industries already most impacted by new laws and regulations explicitly intended to control toxics will be made more economical.

RESPONSE: The commenter is correct. The fee schedule assesses higher fees to those facilities with a more enviromentally hazardous discharge. The Department's fee assessment methodology reflects the opinion of the New Jersey Superior Court, Appellate Division in *Public Service Electric & Gas v. Dep't of Environmental Protection*, 193 N.J. Super. 676 (App. Div. 1984), aff'd 101 N.J. 95 (1985) and *GAF Corp. v. New Jersey Dep't of Environmental Protection*, 214 N.J. Super. 446 (App. Div. 1986), that the fee schedule should assess a greater portion of NJPDES program costs to those facilities which create the need for regulation. For surface water dischargers the Department evaluates the relative risk of pollutant loads, toxicity of the discharge, and the impact on receiving water when determining the environmental impact. For ground water dischargers, the level of monitoring, the ground water impacts, the volume or extent of the discharge, and the risk associated with the discharge are evaluated.

COMMENT: New Jersey, having recently lost more jobs than any other state in the nation, should consider the ability of the industries that are likely to receive the greatest impact of this regulatory change, to pay for these costs.

RESPONSE: The proposed fee schedule distributes costs associated with the processing, monitoring and administering of the NJPDES permits to those facilities with the greatest environmental impact. Under the proposed amendments, the highest fees will be assessed to those facilities that represent the greatest impact on human health and the environment. The Department's responsibility is to protect and enhance water quality. As a result, a facility that cannot meet standards imposed by the Department will be forced to cease discharging.

COMMENT: The proposed fee structure does not reflect the Department's cost for handling individual permits and permit applications.

RESPONSE: The Department's proposed fee schedule is based upon the estimated cost of processing, monitoring and administering a category of NJPDES permits rather than the cost to administer an individual permit. This is consistent with the New Jersey Superior Court, Appellate Division opinion in *Public Service Electric & Gas v. Dep't of Environmental Protection,* 193 N.J. Super. 676 (App. Div. 1984), aff'd 101 N.J. 95 (1985) and *GAF Corp. v. New Jersey Dep't of Environmental Protection,* 214 N.J. Super. 446 (App. Div. 1986), to graduate fees based upon the deleterious environmental impact of the discharge being regulated.

COMMENT: If the Department wishes to pursue the economic theory of having the "polluter pay," it should seek the appropriate taxing authority or assess penalties for noncompliance using that principle.

RESPONSE: The NJPDES fee schedule is not a form of taxation. Rather, the fee schedule distributes the costs incurred by the Department to process, monitor and administer the permits for facilities which must be regulated by the Department. The methodology developed by the Department distributes program costs based on environmental impact or a "polluter pays" concept.

COMMENT: The cost of monitoring one plant could not possibly approach 10 percent of the total program cost.

RESPONSE: The Department distributes NJPDES program cost based upon environmental impact which is calculated in accordance with the formulas provided in N.J.A.C. 7:14A-1.8(c) through (g). The maximum fee of 10 percent was included at N.J.A.C. 7:14A-1.8(a)10 to ensure that fee assessments would be reasonable and distributed based on environmental impact. The actual cost of administering a specific NJPDES permit is not a factor in the NJPDES fee schedule.

COMMENT: The Department should be able to revise the testing requirements on an ongoing basis without modifying the entire NJPDES permit.

RESPONSE: The Department, with the consent of the NJPDES permittee, may modify a NJPDES permit to make corrections or allowances for changes in the permitted activity. Changes that qualify for a minor modification do not require public notice or the issuance of a draft permit. The types of minor modifications the Department is authorized to process are listed in N.J.A.C. 7:14A-2.14. In general, the Department can only modify a permit to correct typographical errors, require more frequent monitoring or reporting, change in interim compliance date in a compliance schedule and change ownership or operational control. All other modifications are subject to the Procedures for Decision Making and Public Comment and Notice Procedures as provided in N.J.A.C. 7:14A-7 and 8.

COMMENT: Keep in mind that certain pollutants may be eliminated from the discharge when economically feasible. That is, use the assessment of fees to clean up the environment not only to generate revenue to administer compliance.

RESPONSE: The Department agrees with the commenter that the economic impact of the fee schedule encourages permittees to eliminate or reduce pollutants from their discharge. Many permittees have implemented wastewater recycling, ceased direct surface water discharges by connecting to a Publicly Owned Treatment Works, changed processes, and initiated pretreatment. All of these activities are consistent with the NJPDES program goal to eliminate the discharge of polluants.

COMMENT: The Department should assign all positions funded from the NJPDES surface and ground water accounts to activities related to the processing, monitoring and administering of NJPDES permits.

RESPONSE: The NJPDES budget for 1990-91 is based upon 217 work years of activity related to the processing, monitoring and administering of the NJPDES permits. Work plans are provided in Appendix E of the Annual Fee Report and indicate the Department's resource allocation and projected outputs for each discharge category. Staff is assigned to perform the described NJPDES activities. The NJPDES program has 40 positions that are vacant. The Department is taking steps to fill vacancies. The Department is also pursuing transfers from other Division programs to the NJPDES program.

COMMENT: The Department should organize and classify the work to increase the productivity per unit of manpower available.

RESPONSE: The Department attempts to issue permits in the most efficient manner consistent with environmental and administrative policies. The 1990-91 Annual Fee Report includes work plans for each discharge category. The Department on an ongoing basis evaluates the need for changes to its organizational structure, its rules and its operating procedures in order to improve productivity. An example of this process is the ongoing discussions on changes to the Department's organizational structure necessary to facilitate facility-wide permitting. It must be recognized, however, that these types of changes are often complicated by new Federal or State statutory mandates requiring new, more complex or expanded regulatory programs.

COMMENT: The Department should demonstrate a commitment to results by publishing planned output targets and actual outputs on a weekly basis through Statewide newspapers of New Jersey.

RESPONSE: A weekly report of output targets and actual outputs would be resource intensive and costly, and would detract from the actual job of writing permits resulting in the issuance of fewer permits. The Department plans to publish a permit status report as soon as the permit database conversion is completed. This report will provide a listing of active permits, pending new applications, and backlogged renewal permits.

COMMENT: The Department is not providing any funds for the facilities to upgrade the operators that work at our facilities.

RESPONSE: The Clean Water Enforcement Act (P.L. 1990, c.28) will provide additional funds for the Wastewater Treatment Operator's Training Account. Ten percent of the penalties assessed by local agencies are to be deposited into this account which will be used to provide training and continuing education to wastewater treatment plant operators. The Clean Water Enforcement Act also establishes an Advisory Committee on Water Supply and Wastewater Licensed Operator Training to advise the Department on wastewater and water supply facility operator training issues.

COMMENT: Why is the Department monitoring and assessing permit fees on an interstate waterway? Why is the United States Environmental Protection Agency (USEPA) or the Interstate Sanitation Commission (ISC) which regulates such operations, not assessing permit fees?

RESPONSE: The Department of Environmental Protection has been delegated the primary responsibility for permitting and enforcement under the Federal Water Pollution Control Act, (33 U.S.C. 1251 et seq.) by the United States Environmental Protection Agency. The Department must impose and enforce limitations set by interstate agencies as well as the USEPA in their NJPDES permits. The New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-9), provides the Department with the authority to assess and collect permit fees to cover the cost of processing, monitoring and administering the NJPDES permit program. ISC has not been delegated permitting and enforcement responsibilities.

COMMENT: In April 1989, we terminated our discharge to the local sewer authority and are now trucking our wastewater to DuPont. The Department has assessed a fee based on our discharge in 1989. The Department should reassess this fee based on the actual discharge.

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RESPONSE: The Department will prorate a discharge permit fee upon termination of the NJPDES permit in accordance with N.J.A.C. 7:14A-1.8(a)8. This adjustment is based on the number of days discharging during the current billing period. A permittee which ceased discharging in 1989 and has requested a permit termination, should only be assessed the minimum fee for the discharge category.

COMMENT: My renewal permit application and industrial pretreatment program have been at the Department for review for up to two years. Is it a lack of personnel? It certainly can not be a lack of money.

RESPONSE: The permittee's pretreatment program application was determined by the Department to be incomplete and additional information has been requested on several occasions.

COMMENT: The commenter stated that the Office of Legislative Services was doing an audit of the NJPDES program. The commenter wanted to know if the audit had been completed and where to obtain the results.

RESPONSE: The Office of Legislative Services has performed an audit of the NJPDES permit. The Department has not received a copy of the results of this audit. Requests for information should be directed to the Office of Legislative Services.

COMMENT: We have reviewed the limited explanation pertaining to the almost 10 percent increase in the total budget from 1990 to 1991. In the current period of economic stress, particularly when the Governor of New Jersey has ordered all departments to cut costs, there is no justification for such an increase. The commenter suggested that the situation be reviewed and appropriate cuts be made.

RESPONSE: The 1990-91 Annual Fee Report—Appendix F provides justification for the $22.4 million proposed budget for FY91. The Department included $2.6 million to implement the requirements of the Clean Water Enforcement Act (P.L. 1990, c.28), a major initiative of the Governor's Office. The Department has also included $2.4 million for vacant positions the Department is authorized to fill. Without these costs the FY91 budget proposal is less then the budget proposed in FY90.

COMMENT: One commenter stated that pollutants may have been assigned different risk factors depending on whether the discharge is to the surface or ground waters of the State. The commenter stated that the same risk should be assigned to the pollutant.

RESPONSE: The Department disagrees with the commenter. The discharge of a pollutant, whether to surface water, ground water or to a Publicly Owned Treatment Works (POTW) poses different environmental impacts. The risk of a pollutant which is discharged to the surface water is based upon the potential threat to aquatic life. The same pollutant may be safely treated by a POTW, and therefore pose no risk at all. This is the case with Biochemical Oxygen Demand (BOD). The risks for pollutants discharged to ground water are based upon drinking water quality standards.

COMMENT: The Department has not accounted for new facilities which will be brought into the NJPDES program. New program initiatives such as the Underground Storage Tank (UST) program will add many new permittees to the NJPDES program. The Department should be able to predict the number of new permits to be issued and the additional fees that the Department will receive. Permit fees paid by existing dischargers should not be used to regulate newly discovered sites. The Department should fund these permitting activities through permit fees paid by these facilities or penalties. Failure to do so would indicate that the existing permittees will be paying for services demanded by these newly added permittees.

RESPONSE: The Department does account for many newly permitted facilities in the annual billing process. All facilities which have been permitted before the invoices are issued are included in the annual billing. For this reason, the rate may be reduced as new facilities enter the system. Only those facilities which are issued final permits late in the billing period are not included. In most cases, these facilities are assessed only the minimum fee after proration for the number of days with the active permit.

COMMENT: The Department has included numerous activities outside the intended scope of the NJPDES rule, in particular, the cost of enforcement activities. These costs should not be born solely by NJPDES permitted facilities, when the Department's authority to impose such costs is highly questionable. The passing of the Clean Water Enforcement Act will dramatically increase the Department's budget, with NJPDES dischargers slated to pick up the entire cost.

RESPONSE: The costs associated with the Department's enforcement program are for permit monitoring, not traditional enforcement activities. Enforcement costs are limited to compliance monitoring and facility inspections, the issuance of enforcement notices, such as Notices of Violations (NOVs), and the preparation of Administrative Orders and Administrative Consent Orders. The Clean Water Enforcement Act will increase the costs for these activities as the Department is now required to conduct compliance inspections and discharge compliance monitoring at all permitted facilities. The anticipated added cost to conduct the additional mandatory NJPDES facility inspections will be $2.6 million in FY91 and increase to $6 million in FY92. Once the Department takes an enforcement action, the Department will charge all costs incurred to the Clean Water Enforcement Act.

COMMENT: The NJPDES program budget has increased tremendously over the past few years. Yearly fee increases have not resulted in an appreciable increase in services. Is the Department funding other Department programs with NJPDES fees?

RESPONSE: The Department is not funding other programs with NJPDES permit fees. Appendix B of the 1990-91 Annual Fee Report provides work plans by major discharge category which indicate the estimated work years allocated to each activity and the planned output for the year.

COMMENT: The United States Environmental Protection Agency provides the Department with funds to administer the NJPDES program. The Department does not mention how these funds are used.

RESPONSE: The Department does receive approximately $1.6 million through the 106 grant program from the U.S. Environmental Protection Agency. The Department also receives about $388,000 for special studies. The Federal grant funds are used to pay for ambient monitoring activities, laboratory service coordination and scheduling, quality assurance/quality control, intensive surveys, biological studies, special investigations, shellfish program activities, and pollution investigations to identify responsible parties which may lead to the issuance of NJPDES permits. NJPDES permit activities are used for the matching funds to earn the grant. For every three dollars spent by the Department, the USEPA provides one dollar. Therefore, for this grant, the Department must perform approximately $5 million in eligible matching activities.

COMMENT: The Department has included the cost to fund 40 vacant positions for the surface water program, although authorization has been received to fill 33. If the rest of State government is cutting back, the Department should be reducing the NJPDES program. The Department should not be permitted to impose unnecessary costs upon NJPDES permittees to avoid austerity measures which would otherwise be imposed.

RESPONSE: The Department was authorized to fill 33 of the 40 vacant positions and was appealing to the Office of Management and Budget for approval for the remaining seven positions. A total of $2.4 million was included to fill all 40 vacancies. At the time of proposal, the Department indicated that a mid-year evaluation would be completed to ensure that the Department does not bill for positions that would not likely be filled this year. A decision has been made to fill 20 of these positions in FY91. The cost for 40 vacant positions (with fringe and indirect costs) has been reduced by $1.8 million from $2.4 million to $590,000. This will cover the cost for 20 newly filled positions for three months and the cost associated with 10 temporary reassignments for six months.

COMMENT: The Department's proposed budget is not sufficiently detailed to allow for adequate review and verification that the costs included apply only to NJPDES related activities. The costs for some functions outside the NJPDES program may be funded through the NJPDES budget under the theory that their work is somehow useful in the NJPDES program. The Department has not published the distribution of costs for the various positions, nor even disclosed the method of timekeeping used to allocate staff time between NJPDES and non-NJPDES work.

RESPONSE: The Department has provided a work plan for each major discharge category in Appendix E of the 1990-91 Annual Fee Report. In the Division of Water Resources NJPDES work activities are performed by five different elements. The Wastewater Facilities Management Element is responsible for issuing NJPDES permits for all surface water, indirect and some ground water discharge activities. The Ground Water Quality Management Element is responsible for issuing permits to operating and closed landfills, and to facilities with active, inactive and past discharges to the ground waters of the State. The Enforcement Element inspects all NJPDES permitted facilities, assesses permit compliance, and issues enforcement actions. Support services are provided to the permitting bureaus from the Planning Element, Geological Survey Element and Management Services Element. These elements provide direct support functions for the NJPDES permitting programs, such as data man-

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agement, sampling, and computer modelling. The Department has made available to the interested public the Department's Cost Accounting handbook, as well as actual time expenditure reports. Only the time spent on actual NJPDES eligible work activities is included in the actual expenditures provided in Appendix G of the 1990-91 Annual Fee Report. Although a position may be paid by NJPDES fees, only the eligible activities are counted in the determination of expenditures.

COMMENT: The Department should reevaluate the proposed budget and look at areas where they can cut costs. The Department should eliminate those activities that are not necessary such as bioassay testing. NJPDES permittees are required by their permit to conduct bioassay testing using a Department certified laboratory. This activity is a duplication of effort for which NJPDES permit fees should not be expended.

RESPONSE: The Department includes all activities which are required to process, monitor and administer the NJPDES permits. The Department conducts bioassay testing to ensure permit compliance, for the same reason that the Department performs compliance inspections and effluent sampling. The Department has evaluated the proposed budget presented in Appendix F of the 1990-91 Annual Fee Report for FY91 and has reduced the FY91 surface water budget $3 million and the ground water budget $0.3 million for a total of $3,277,197. The Department has also reduced the projected cost for overtime and the Clean Water Enforcement Act. Based on these reductions, the Department has reduced the fee schedules for each discharge category. The revised schedules are as follows:

Municipal Discharge to Surface Water	$5,143,152
Municipal Discharge to Ground Water	328,286
Land Application of Residuals	80,000
Industrial Discharge to Surface Water	5,551,438
Significant Indirect Discharger (SIU)	1,233,653
Landfills	1,841,834
Discharge to Ground Water	4,977,973
TOTAL	$19,155,973

COMMENT: The NJPDES budget includes a 32.7 percent "indirect cost" rate. It is not clear what is meant by "indirect cost" but to the extent that it may apply to such directly unrelated functions (Commissioner's Office, Division of Financial Management, or even the Governor's Office), they should not be funded by NJPDES permit fees.

RESPONSE: The NJPDES budget includes a 32.7 percent indirect cost rate to cover costs incurred by the Department for a common or joint purpose benefiting more than one program objective and not readily assigned directly to a single program. To this extent, NJPDES fees are used to fund activities performed by the Commissioner's Office and the Division of Financial Management.

COMMENT: The actual personnel costs for FY90 were $14 million. The budgeted personnel cost for FY91 are $16.2 million, which is an increase of $2.2 million. The Department has not provided any explanation for such an increase.

RESPONSE: The proposed cost for vacant positions alone is $2.4 million. As stated above, this cost has been reduced $1.8 million to $590,000 for FY91.

COMMENT: The Department assures that computer reports of the program's operating expenditures are available. However, the Department has provided no indication that such data will be audited to assure the accuracy of such information.

RESPONSE: The Department has purchasing procedures in place to ensure that operating expenditures are consistent with program intent. The Department has recently provided the Office of Legislative Services full access to all records concerning the NJPDES program during a recent audit of the NJPDES program and will continue to cooperate in future audits of the NJPDES program.

COMMENT: The cost for pagers is hard to understand, as this program is not regularly involved with emergency services.

RESPONSE: The NJPDES program has been assessed 60 percent of the total cost for pagers incurred by the Division of Water Resources—Enforcement Element. Water enforcement personnel are part of the emergency response team and a significant number of calls are to NJPDES permitted facilities for emergency situations, plant upsets, overflows, etc. which required the Department's immediate attention after normal working hours.

COMMENT: If the Department expects the regulated community to pay for services it is receiving, it must also be prepared to account for those services just as a private business must be accountable to its customers.

RESPONSE: The NJPDES program has recently been audited by the Office of Legislative Services. Their findings should assist the regulated community to evaluate the Department's services.

COMMENT: If there is a hiring freeze at the Department, how are these new position to be filled? If these positions are not going to be filled, how can we expect better service? There is a tremendous backlog of outstanding permits at the Department. Is the regulated community getting anything more for the increased fees? When can we expect the better service to begin?

RESPONSE: The Department has petitioned the Office of Management and Budget (OMB) for an exemption from the State mandated hiring freeze. The Department has received authorization, but no positions have been filled at this time. The Department is seeking to fill vacancies with existing personnel through voluntary transfers. During FY91, 10 existing staff were temporarily reassigned to the NJPDES program. The Department plans to fill 20 vacancies for the last three months of the fiscal year. The Department is also working to execute a contract to hire consultants to assist with the permit backlog. The Department anticipates that work pursuant to this contract will begin in the latter part of 1991.

COMMENT: We suggest that the excess funds collected in past years under the NJPDES system be maintained in the system to stabilize the rates. So far we have been paying for increased service each year and not receiving it.

RESPONSE: The Department has not received fees in excess of the costs incurred by the Department to process, monitor and administer NJPDES permits. Actual fee assessments have been increasing for large wastewater treatment facilities as a result of the Department's decision in 1987 to phase out the cube root factor, the improvement in the overall quality of effluent being discharged by all treatment plants, and to a lesser degree, the increases in the NJPDES budget. Under the present fee assessment methodology, fees are based on environmental impact rather the services provided to an individual facility. The Department will provide a credit if funds collected against FY90 fee assessments are greater than costs incurred by the Department on behalf of the NJPDES permit program.

COMMENT: Overall State spending in State government is dropping eight percent at a time when the municipal budget for the NJPDES program is rising by 32 percent. The municipal budget was $5.2 million in FY90, and is being increased to $6.88 million in FY91. The Annual Fee Report fails to document the detailed basis in support of increased fees.

RESPONSE: The NJPDES municipal program budget has increased as a direct result of the Clean Water Enforcement Act (CWEA) and by including all vacant NJPDES positions in the budget. CWEA costs for FY91 are projected at about $1 million, while vacancies added another $1 million. Both of these budget items have been evaluated and reduced for the final FY91 budget. The revised municipal budget for FY91 is $5,551,438.

COMMENT: The Annual Fee Report fails to report on the accomplishments in FY90 that would justify further increases in the budget. Lack of productivity in the permit program will compound as we move into 1991 without reconciling many of the policy and operating differences that have caused municipal permittees to appeal their permits. The net result is a system that underperforms and leaves municipal entities vulnerable to challenge for "paper" violations of their permit which could be corrected if the permit issuance system could work at a reasonable rate.

RESPONSE: A significant part of the allocated time for NJPDES municipal permit issuance is for the NJPDES permit adjudication process. Most permittees automatically request permit adjudications because of the potential liability associated with the Clean Water Enforcement Act. Increases in the 1990-91 municipal budget, $1 million to fill vacant positions and $1 million to implement the requirements of the Clean Water Enforcement Act, were targeted for the resolution of adjudicatory hearings. NJPDES fees will be used by the Department, the Office of Administrative Law and the Division of Law and Public Safety to accelerate the processing time for a permit adjudication. However, these positions have not been filled and costs will not be incurred this fiscal year.

COMMENT: The Department sent the proposed fee assessments to the NJPDES permittees in December. This notice came after our budget was due to the Department of Community Affairs. Our budget must be approved by the Utility Commissioners in September or October. So, we start in June. We cannot come up with this kind of fee after our budget has been approved by the Department of Community Affairs.

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RESPONSE: The Department intended to issue the proposed fee assessments in September, hold the public hearing in November and adopt and issue the NJPDES fee assessments in January. This process was delayed and informal notices were not sent to Publicly Owned Treatment Plants until October. This action was intended to assist in the local budgeting process. Further complicating the budgeting process are the different fiscal years used. The Department of Community Affairs may allow local governments to adopt the State fiscal year.

COMMENT: The Department has included Clean Water Enforcement in the FY91 NJPDES budget. While there may be a need for some positions, we are being asked to pay for a big chunk, without any real knowledge of the costs.

RESPONSE: The Department agrees with this comment and has reduced the proposed costs to implement the Clean Water Enforcement Act in FY91. The revised FY91 budget projection for the implementation of the Clean Water Enforcement Act is $1.7 million. This is based on the Division of Water Resources filling a total of 64 positions of which 32 are NJPDES for three months or eight work years at an anticipated cost of $408,000. The Division of Law will fill 33 positions of which 16.5 are NJPDES for three months or 4.1 work years at an anticipated cost of $310,000. The Office of Administrative Law (OAL) is authorized to fill 13 positions and will be based on actual billings for judicial services during FY91. NJPDES operating costs for all three agencies is estimated at $836,000. This includes one-time purchases for new work station furniture and computer hardware, NJPDES data base enhancement, and a contract for economic cost benefit analysis. The Department will issue a credit in future billing periods, if the revenue received for a budget category exceeds the costs incurred by the Department.

COMMENT: Why has the Department included the costs for the Deputy Attorney General's Office in the Division of Law and Public Safety in the NJPDES budget?

RESPONSE: Past NJPDES budgets have included costs associated with the Department's Division of Regulatory Affairs. The current budget includes the costs associated with staff assigned to peform legal support for rule development and adjudicatory hearing requests. The Department has included costs for NJPDES legal support personnel which have been reassigned to the Deputy Attorney's General in the Division of Law and Public Safety.

COMMENT: There is a distinct need for a NJPDES program audit. A thorough audit of positions funded through NJPDES fees should be conducted to ascertain job functions and responsibilities. A time audit should also be performed on individuals who are funded by NJPDES fees so as to determine what time was spent on which facility so as to determine if there truly exists a correlation between fees charged and the time was spent on a permittee.

RESPONSE: The Office of Legislative Services audited the NJPDES program in 1990. The State Auditor should be contacted for his findings.

COMMENT: The assignment of risk factors is arbitrary. Risks are assigned to classes of contaminants. For example, total volatile organics in ground water are assigned a risk factor of 100,000. Clearly, within this board class of compounds comprising volatile organics, there is represented a wide spectrum of human and ecological risk factors. Human health impacts could range from benzene (carcinogen which is classified a Category A by EPA) to ethyl alcohol (routinely consumed as a beverage). Under the existing system, these compounds are both assigned the same risk factor. A more refined categorization of chemicals should be made which truly groups compounds together on the basis of human health and/or ecological risks.

RESPONSE: The risk factor table presented in N.J.A.C. 7:14A-1.8 Table II was adopted by Commissioner Hughey on May 28, 1985. Since the original adoption, the Department has not made any changes to the risk factors, except the proposal to change petroleum hydrocarbons. The Department agrees with the commenter that more information is now available and that the risk factors should be reevaluated. However, this has not been proposed at this time.

COMMENT: The impact of using stream rating factors to calculate surface water permit fees is inequitable. Surface water permit fees are directly proportional to the "Stream Factor." If a stream does not meet a designated use, the permittee is required to pay an increasing amount based on the degree of designated uses not being met. Clearly, in many cases this penalizes the permittee for the action of others. In many cases one party is not solely responsible for violating a designated use for a particular waterbody. Higher fees many be assessed as a result of impacts of other dischargers on the receiving water.

RESPONSE: Surface water fees are primarily based upon the quantity of pollutants discharged by the permitted facility. Therefore, permit fees are not directly related to the stream rating factor. The stream rating factor increases or decreases the environmental impact of the discharge. The average stream rating is 1.13 and ranges from 0 to 1.72. This score is added to the bioassay factor which has a default of one, so it does not change a facility's environmental impact to zero. The mandate of the Clean Water Act is to protect all waters of the State. The Department's fee schedule is designed to discourage the discharge of pollutants through higher fee assessments into those waterways whose designated uses are already impaired as a result of pollution.

COMMENT: The Department utilizes a "Stream Factor" to calculate surface water fees. While the Department has not proposed any changes, the commenter stated that the current structure for determining "designated use" is not always a function of the water quality or stream health. Designated uses for New Jersey's waters are fishable and swimmable. A swimmable designation is based on fecal coliform levels, while a fishable designation is based on fishery data obtained from State biologists. Water quality data was also factored into the decision-making process where no fisheries data was available, or when the water quality data identified specific problems. The commenter recommended that the Department modify the designated use factor and use the existing water classification. This would protect those reaches classified as trout maintenance, and if structured correctly, benefit those dischargers willing to locate or relocate into urban areas on SE2 or SE3 waters. In effect, fee reductions could be applied to those facilities discharging into SE2 and SE3 waters, where the streams meet their "designated uses."

RESPONSE: Contrary to the commenter's statement, designated use attainment is a function of water quality. Failure to obtain swimmable status is the result of excessive bacterial contamination. Failure to attain fishable status is the result of an inability of the waterway to support healthy communities of aquatic life. Insufficient dissolved oxygen levels, excess siltation, the presence of toxics in the environment and/or some other anthropogenic stress factor may result in an aquatic resource (fin or shellfish) being unsuitable for human consumption because of pathogenic or toxic contamination, and, therefore, the waterway is not fishable. The principal source of fishery evaluations is the Department's Fish and Game fishery assessments. However, the assessed quality of these fisheries is the result of the environmental conditions described above. The mandate of the Water Pollution Control Act is to protect all waters of the State. The Department's fee schedule is designed to discourage the discharge of pollutants into waterways whose designated uses are already impaired as a result of pollution. The commenter suggests that the Department should use the Water Quality Classification in the fee assessment. The Department disagrees since the Water Quality Classification may reflect uses that have not been achieved. Using the Water Classification System as recommended by the commenter would give credit for the achievement of uses whether or not they have actually been achieved.

COMMENT: The Surface Water Rating Factor assesses receiving water quality, designated uses and the attainment of designated uses. A discharger is effectively penalized for the quality of the receiving water into which it discharges. This is unfair since the dischargers may in no way be contributing to the level of pollution existing in the receiving water and may be complying with all conditions of their NJPDES permits. This appears to be in direct opposition to one of the primary aims of the NJPDES Fee program, which is supposedly to assess the program costs in direct proportion to the degree of environmental impact.

RESPONSE: Fee assessments are primarily based upon the quantity of pollutants discharged by a facility to the surface waters of the State. The three components of the Surface Water Rating Factor balance existing water quality, existing water use, and the attainment of designated uses. This factor has a theoretical range between zero to four. The fee schedule does not automatically penalize a permittee, through a higher fee assessment, because of poor water quality.

COMMENT: One commenter stated that it could be argued that effectively treated discharges could serve to dilute an otherwise polluted waterbody.

RESPONSE: The NJPDES surface water permitting program sets limitations based on current technology and/or receiving water quality. As time progresses and technological and scientific information improves, the USEPA requires more stringent permit limits. Thus, the discharge limits in NJPDES permits become more stringent. The Department clearly does not have the authority to exempt individual discharges from the most stringent applicable limitations simply because they discharge to a polluted waterway. On the contrary the NJPDES Surface Water program is intended to act as a driving force to improve polluted waterways.

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COMMENT: In receiving waters regulated by the Interstate Sanitation Commission (ISC), water quality is impacted by past and present point and non-point source discharges regulated, in varying degrees, by more than one regulatory authority. A fully compliant discharger in New Jersey is penalized due to non-compliant dischargers in other states, over which it has no control.

RESPONSE: As stated above, the major factors used to determine an individual fee assessment are based upon factors which are within the permittee's control, primarily the quantity of pollutants discharged and the toxicity of the discharge. The Department is aware of this interstate problem and is in the process of developing "Total Maximum Daily Loads" to be divided between the states to ensure that each state receives the appropriate "loading" to calculate water quality based effluent limits.

COMMENT: The "bioassay factor" included in the NJPDES surface water environmental impact calculation should be reevaluated in relation to the "stream rating factor." It is not clear how the bioassay factor relates to the quality and characteristics of the permittee's receiving water.

RESPONSE: The bioassay factor has no relationship to the quality and characteristics of the receiving water. The bioassay factor evaluates the overall synergistic and antagonistic effects of the effluent as measured by whole effluent toxicity testing. The stream rating factor is based on existing water quality, existing water use and the attainment of designated uses. It is possible for a discharge to be assigned a high bioassay factor and a low stream rating factor, and visa versa. The two factors are totally independent of each other.

COMMENT: The Department should amend the environmental impact formula for the discharges to surface water to account for the parameter concentrations at the discharge points as well as their loadings. The commenter suggested that the present formula based on the total quantity of pollutants discharged favors facilities with small, toxic dischargers over those which may be treating waste very effectively but discharging large volumes.

RESPONSE: The costs of the NJPDES program are distributed among the regulated facilities based on the environmental impact of the discharge. The fee assessment methodology is based on the actual quantity of pollutants discharged and the risk associated with the pollutant. The pollutants are arranged into risk categories based on potential toxicity to aquatic organisms, known toxicity to aquatic organisms, acutely toxic or suspected carcinogens, known carcinogens or neurotoxins and persistence in the environment. Using these risk factors ensures that a small toxic discharge pays an appropriate share of the NJPDES program costs. Likewise, a facility that discharges a large volume of relatively non-toxic pollutants will also be assessed an appropriate share of the NJPDES program costs.

COMMENT: The Department may be overcharging facilities by using pollutants which are duplicate measurements of environmental impact, such as BOD-5, BOD-20, Nitrogen, and Dissolved Carbon. The commenter recommended that the Department utilize one indicator pollutant.

RESPONSE: The fee assessment methodology is based upon all limited pollutants. Therefore, when calculated by the Department's computer program it is possible that duplicate measurements are included. The Department has initiated a pre-billing process. This is the appropriate time to address duplicative parameters.

COMMENT: The Department states that the amended fee schedule ensures that those who do the most to introduce pollutants into the environment bear a greater share of the NJPDES administrative costs. The proposed fee schedule is grossly disproportionate to the effects of the effluent upon the receiving waters and is also unrelated to the volume of wastewater discharged.

RESPONSE: The commenter's first statement is correct. Fees are not simply based upon the volume of wastewater discharged. The Department's fee schedule evaluates the overall impact of the discharge as measured by the actual pollutant loadings discharged and the potential impact on the environment as measured by the stream rating factor. The Department must consider the effect of the effluent on the receiving water during the permitting process as the 1987 amendments to the Clean Water Act require water quality based effluent limits. This rule does not consider the volume of wastewater discharge, rather environmental impact is based on the quantity of pollutants discharged. It is possible for a large discharger with highly treated effluent to be assessed a lower fee than a small discharger with poorly treated wastewater.

COMMENT: West New York Utility Authority discharges 10 million gallons per day (MGD), Kearny Town Utility Authority discharges two MGD, while Passaic Valley Sewerage Commission (PVSC) treats up to 280 MGD and Bergen County Utilities Authority discharges 60 to 70 MGD. All four facilities have been assessed the maximum 10 percent fee for municipal surface water discharges. These assessments are clearly inequitable and discriminatory.

RESPONSE: NJPDES fee assessments are based upon the discharger's environmental impact in accordance with N.J.A.C. 7:14A-1.8(c). NJPDES fees are not based upon the volume of wastewater discharge. Based on this methodology, a small discharger like West New York or Kearny can have the same environmental impact as a large volume discharger like PVSC. The fee schedule distributes the costs of the NJPDES program to those facilities with the greatest environmental impact. The Department has also included a maximum fee at N.J.A.C. 7:14A-1.8(a)10 to ensure that the fee schedule is reasonable. Facilities assessed the maximum fee of 10 percent also contribute significant environmental impact and benefit from the maximum fee provision.

COMMENT: Several communities have entered into administrative consent orders or judicial consent orders with the Department and are complying with the terms of the agreement to upgrade treatment or eliminate the discharge. Communities have already settled penalty cases instituted against them by the Department. The assessed NJPDES fees are more than the penalties paid. These NJPDES permit fees constitute a hidden penalty and are an administrative form or double jeopardy, which is unfair and unreasonable.

RESPONSE: The 1987 amendments to the Federal Clean Water Act mandated that all Publicly Owned Treatment Works (POTWs) meet secondary treatment levels by July 1, 1988. The Department and/or the U.S. Environmental Protection Agency entered into administrative consent orders or judicial consent orders with facilities unable to meet these permit requirements to upgrade or eliminate the discharge. These facilities continue to be assessed a NJPDES permit fee based upon the calculated environmental impact of their discharge before upgrade. This action by the Department does not constitute administrative "double" jeopardy. The facility is paying the appropriate share of the Department's NJPDES program cost based upon the actual pollutants discharged.

COMMENT: The Water Quality Inventory Report indicates that neither the Hudson River or the Hackensack River meet their designated uses. During the past six years significant efforts have been made to clean up these rivers. The stream rating factors, based upon water quality data which was gathered in 1984, are obsolete and inaccurate.

RESPONSE: Upgrades to some waters of the lower Hudson River occurred in 1984 and were principally a result of a use attainability study which resulted in the upgrading of some areas previously classified as "swimmable/fishable uses not attainable" to a classification termed "attainable." This reclassification does not necessarily imply that these waters are at this time swimmable/fishable. What this means is that possible future upgrades to the use status as a result of improvements in water quality may occur through reasonable management effort. The Department has noted improvements in the levels of dissolved oxygen and fecal coliform levels to levels which fall into the category of "partially meeting use." This will be reflected in the New Jersey 1990 Water Quality Inventory Report. However, the proposed fees for 1990-91 are based on the data published in the New Jersey 1988 Water Quality Inventory Report.

COMMENT: The Hudson River is an interstate waterway which receives significant pollutants from New York. The Hudson River does not meet its designated use of fishable. The PCB's which were discharged from a General Electric Plant in Albany, New York resulted in a public health advisory on fish. The commenter stated that the stream factor is arbitrary and unreasonable because it requires New Jersey dischargers to pay increased fees because the receiving water does not meet designated uses as a result of pollutants emanating from outside New Jersey.

RESPONSE: Contamination to the Hudson River emanates from both New Jersey and New York. It is true that the GE plant contributed significant quantities of PCB's to the lower Hudson River watershed. However, leaching landfills, industrial and municipal sewage treatment plants and electric equipment from both states continue to contribute sources of contamination emanating from both states which continue to contribute PCB loads to this estuary system.

COMMENT: A commenter stated that a facility which discharges "clean" effluent to a highly polluted receiving water is assessed a greater proportion of the NJPDES budget than a facility which discharges polluting effluent into a clean receiving stream. This is contrary to the Department's intent to require those who do the most to introduce pollutants into the environment to bear a greater share of the administrative costs.

RESPONSE: The Department regulates the discharge of pollutants to the waters of the State. The fee assessment is based on the quantity of

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pollutants discharged. The less pollutants discharged, the lower the fee assessment. A facility which contributes a heavy pollutant load will pay higher fees.

COMMENT: The Hudson River is significantly more polluted than the Hackensack River, yet both are assigned the same Stream Rating Factor of 1.49.

RESPONSE: The Hudson River has been assigned a Stream Rating Factor of 1.49, while the lower Hackensack River has been assigned a Stream Rating of 1.51. Neither river meets designated uses and both have been assigned a one for their Water Use Index. The only difference is in their Water Quality Indexes. The Hudson displays slightly better water quality than the lower Hackensack.

COMMENT: The Hudson River is similar to the Delaware River Zone 2 (Trenton to Northeast Philadelphia) in terms of the quantity and quality of effluent discharged and the width of the river at the sample point. However, the Hudson River is assigned a stream rating factor of 1.49 compared to the Delaware River which is assigned a factor of 0.5. The assignment of stream rating factors is arbitrary, capricious and unreasonable and bears no relationship to the actual effect of the discharge, penalizing dischargers on polluted receiving streams.

RESPONSE: The Hudson River and the Delaware River—Zone 2 are very different in terms of Stream Rating Factors. A water quality index of 23 is assigned to the Delaware River. Water quality indexes between 11 and 25 are classified as good with generally low amounts of pollution and water uses periodically not met. The Hudson River water quality index is 47. Water Quality Indexes between 26 and 60 are classified as "fair" with pollution amounts varying from moderate to high and certain water uses prohibited. Both rivers have the same rating for water use. The Hudson River does not meet the expected uses, while the Delaware River—Zone 2 does not meet or seasonally does not meet all designated uses. The stream rating factor does not consider the quantity and quality of effluent discharged or the size of the receiving stream but the overall status of the waterbody.

COMMENT: One commenter stated that the municipal budget for FY91 was proposed at $6,881,075 of which surface water dischargers would be assessed $6,374,210. The Annual Fee Report listed municipal facilities assessed the 10 percent maximum fee at $673,863. The individual fee calculations listed these maximum fees correctly at $637,421.

RESPONSE: The commenter is correct. The proposed municipal budget for FY91 was $6,881,075 with $6,374,210 being distributed to surface water dischargers. The maximum fee as proposed should have been $637,421 not the $673,863 as listed in the face schedule. Municipal fee assessments were based on the correct budget.

COMMENT: The top 10 municipal permittees have been assessed nearly 73 percent of the municipal program costs. Clearly, this is not equitable.

RESPONSE: The fee assessment methodology distributes the municipal program costs to permitted facilities based upon the calculated environmental impact. The top 10 municipal permittees contribute 73 percent of the total environmental impact.

COMMENT: Under current arrangements, the outfall authority is assessed a NJPDES fee, which is in turn allocated by the outfall authority, to the treatment plants which discharge to the outfall authority. The commenter stated that the individual treatment plants should be billed directly, rather than the Department assessing one fee to the outfall authority, because they perform bioassays which would effect their individual fee assessment.

RESPONSE: NJPDES fees are based upon the discharge of pollutants to the surface waters of the State. The discharges from these treatment plants into the outfall authority are regulated through NJPDES permits by the Department. The actual quantities of pollutants discharged are reported by the outfall authority and reflect the combined effect of both discharges. The NJPDES permit for the outfall authority will soon be modified by the Department to include toxicity monitoring requirements and the fee payers may then benefit from this new requirement. The Department will continue to assess a single permit fee to the outfall. The outfall authority can assess fees to its users as appropriate.

COMMENT: Treatment plants which are required to achieve high levels of treatment because they discharge to sensitive receiving waters are assessed considerably lower fees. Ocean dischargers which require only secondary treatment because the receiving waters can assimilate large pollutant loadings are being penalized through higher fee assessments.

RESPONSE: The Department is required to determine water quality based effluent limitations for municipal dischargers pursuant to the Clean Water Act and, when those limitations are more stringent than the minimum treatment requirements, to incorporate the water quality based limitations into the NJPDES Discharge to Surface Water permit. Treatment plants discharging to sensitive receiving waters are issued permits with more stringent discharge limits. Therefore, these plants discharge less pollutant load. An ocean discharger may be issued a permit with less stringent discharge limits, which may result in the discharge of larger pollutant loadings. The ocean dischargers can upgrade their treatment process and reduce the actual quantity of pollutants discharged and their fees.

COMMENT: It can be argued that discharging to a pristine trout stream in Northwest New Jersey is a lot worse than dumping pollutants into the Hudson River, which is already dirty.

RESPONSE: All discharges increase the pollutant load to a stream. The limits for a discharge to a trout stream may be more stringent than those for dischargers to the Hudson River because the Department must utilize water quality based effluent limits. Therefore, the Department through NJPDES permits is protecting all waters of the State.

COMMENT: The Department has assigned eight work years to complete a projected 50 final municipal permits. This is about 280 hours to write a permit. This seems excessive when this program is not new.

RESPONSE: The Department has proposed in the work plan provided in Appendix E of the Annual Fee Report to complete 50 final municipal permits. The Department must perform many activities before issuing the final permit. Administrative procedure requires that the Department complete a full review of all monitoring over the past permit period, develop new discharge limits based on current State and Federal requirements, public notice the document, where necessary must hold a public hearing, respond to public comments, and incorporate these responses into the final permit. The Department estimates that the actual permit writer requires on average 186 hours to review, draft and process the final permit. An additional 94 hours is allocated for staff development and training, supervisor review of the permit documents, responding to public information requests on the permit status, internal and external meetings and the processing of requests for permit adjudications. The Department does not agree that the time allocated for permit issuance is excessive. Furthermore, the USEPA has indicated that the Department's permit writing time estimate is less than what the USEPA estimates for their permit writing in non-delegated states.

COMMENT: Every permit issued for discharges to the Atlantic Ocean requires secondary treatment, and should be virtually the same permit. The Department should not require eight weeks to write each permit.

RESPONSE: As stated above, each permit is considered unique because of past history, the composition of the discharge (the mix of industrial and domestic waste), compilation of facility data and the design of the treatment plant. The Department's estimate of eight weeks represent the average case with normal related activities. Some permits will require more time, particularly those with many comments and/or those where requests for permit adjudications are filed, while others require less than the average work year estimate.

COMMENT: The proposed rule does not distinguish between those permittees that are responsible for pollutant releases and those current owners who had no involvement with the release. Many facilities enter the NJPDES program as a result of ground water pollution detected through the ECRA program, the Underground Storage Tank program and the Spill Act. In many cases, these ground water problems were created decades ago by entities long since gone. The present owner must pay the cost to remediate the ground water problem as well as NJPDES permit fees. This is inequitable and should be rectified.

RESPONSE: The Department is authorized to assess annual permit fees to cover the cost of administering the NJPDES permit program. The NJPDES ground water permits are issued to the current facility owners for ground water discharge activities, the monitoring of past discharge practices and/or ground water remediation and source removal. The permittee is responsible for paying the cost of monitoring and remediating the ground water pollution as well as paying the NJPDES permit fee. The NJPDES fee schedule distributes the NJPDES program costs associated with ground water permitting activities, including permitting, inspections, compliance evaluation, and the review of ground water remediation alternatives based upon environmental impact in accordance with N.J.A.C. 7:14A-1.8(d).

COMMENT: The environmental impact for ground water discharges in compliance monitoring and corrective action are based on the limited pollutant concentrations. At many sites, natural ground water pollution sources exist or ground water pollution is migrating onto the permit holders property. These pollutants are included in the environmental impact calculation. The Department should incorporate a method to account for these types of occurrences.

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RESPONSE: Offsite sources of ground water contamination are usually delineated as a part of the NJPDES permit requirements. When these offsite sources are delineated and documented, the permittee can request a permit modification to recognize the offsite contamination.

COMMENT: The ground water environmental impact calculation does not distinguish between those permittees who are actively discharging pollutants into the environment and those permittees who are actively remediating the environment. In fact, those parties who are actively involved in remedial activities are often the most heavily assessed. Therefore, strong economic incentives exist for parties to resist or delay entering into the remedial phases of the ground water clean-up activities. Those parties for whom a discharge is a routine business occurrence should be provided with incentives to discontinue discharges.

RESPONSE: Facilities that require an active ground water discharge as part of their normal operations are assessed a permit fee based on the volume and risk associated with the discharge. Thus, they have an incentive to reduce the volume and type of wastewater discharged as they have a continuing discharge. A facility controlling and/or cleaning up contaminated ground water should see their permit fees proportionately reduced as the areal extent of contamination is reduced and the concentration of pollutants decreases.

COMMENT: In virtually every remediation project undertaken through an administrative consent order, the Department's oversite costs are reimbursed by the consenting party. The commenter recommended that fees be adjusted on a dollar for dollar basis or waived altogether for sites covered by administrative consent order or any other enforcement document which requires repayment of oversite costs.

RESPONSE: The NJPDES program does not include the costs associated with the oversite of an enforcement document such as an Administrative Consent Order in the NJPDES program budget. Likewise the Department does not recover through the administrative consent order oversite the cost associated with overall permit management. The costs associated with the NJPDES and administrative consent orders are for completely different work activities and are assessed on different bases.

COMMENT: The ECRA program also assesses fees to offset the Department's costs for ECRA clean-ups plan reviews, and every other stage of the ECRA process. NJPDES fees for ECRA sites should be adjusted to reflect any overlap in fee payments.

RESPONSE: As stated above, the ECRA program regulates the removal of the source which results in a discharge of dissolved pollutants to the ground water. The NJPDES permit regulates the long-term ground water remediation. ECRA fees and NJPDES fees are assessed for different actions by the Department.

COMMENT: The proposed fee structure does not fairly distinguish between an active regulated discharge and ground water remediation activities. For on-going discharge activities, the Department can discourage discharges and induce facilities to seek alternative ways of managing and reducing wastewater. For ground water facilities without an on-going discharge activity, the NJPDES permit is for monitoring and remediating existing conditions. The current fee structure will discourage people from identifying ground water contamination and remediating these problems. The NJPDES program is a no-fault, strict liability program and the issuance of a permit to perform monitoring or remedial activity does not necessarily reflect any fault on the part of the permittee. Many remedial activities do not relate to profit-making operations and are taking place at closed facilities. Remedial activities do not add pollutants, rather these activities remove pollutants from the environment. Facilities should direct funds towards corrective measures rather than being assessed NJPDES permit fees.

RESPONSE: Identifying and controlling existing ground water contamination is a regulatory and not a voluntary requirement. NJPDES Discharge to Ground Water permits are issued to persons responsible for the contamination. Responsible persons are usually identified through other Department actions such as the Underground Storage Tank program, ECRA and enforcement. In so far as practicable, the NJPDES fee assessment methodology assesses smaller fees to those facilities taking corrective measures to eliminate contamination.

COMMENT: One commenter stated that his ground water permit fee would exceed the cost of ground water remediation activities. The proposed fee bears no relationship to the Department's costs and is in fact a penalty.

RESPONSE: The ground water fee assessment methodology for those facilities that are conducting compliance monitoring and/or corrective action are based on the areal extent of contamination, the concentrations of pollutants and the risk associated with these pollutants, and a ground water rating factor. Until the extent of contamination is defined, the Department uses the total area of the site and the pollutant concentrations identified in the most affected monitor well. Under this scenario, it is possible that the cost of remediation is less than the calculated environmental impact. For this reason, the Department encourages all permittees to quickly delineate the plume. Once delineated, the Department uses the average pollutant concentrations at the site. As stated before, NJPDES fees are based on the cost of administering the NJPDES permit program not the costs incurred administering an individual permit. The assessed fees are not penalties.

COMMENT: One commenter's fee would fund six percent of the ground water program budget for FY91. The commenter stated that conditions at the site could not represent six percent of the ground water pollution in the State. The commenter thought the fee schedule as proposed is grossly unfair and fails to accomplish the Department's stated goals.

RESPONSE: The fee assessment methodology does not purport to relate ground water pollution at any site to all ground water pollution in the State. The fee assessment methodology evaluates the extent of contamination, the magnitude of pollutants in the ground water, and a ground water rating factor which considers ground water use, the aquifer, the permeability and the level of monitoring required by the NJPDES permit.

COMMENT: One commenter stated that his facility has been unable to obtain required permits to implement ground water remediation. As a result, his facility remains in compliance monitoring and pays a higher fee. The commenter stated that our NJPDES permit fee should provide sufficient financial support for the Department to provide the personnel necessary to review our application in a timely manner.

RESPONSE: The Department is moving toward facility based permitting. This would ensure that a ground water permittee that requires Treatment Works Approvals and/or Discharge to Surface Water permits receive them in a timely manner and the desired ground water remediation is initiated as quickly as possible.

COMMENT: Recognizing that the Department must cover the cost with NJPDES permit fees, divide the budget by the number of permittees in the discharge category. This would result in an average fee of $8,000 for every permittee.

RESPONSE: The Department disagrees with this comment. Assessing each permittee an equal share of the category budget would assess a disproportionate share of costs to small dischargers. The Department has developed a fee assessment methodology which distributes a greater share of NJPDES program costs to those facilities which create a need for regulation. The fee schedule distributes fees in proportion to the deleterious impact of the discharge. Therefore, the commenter's suggestion would decrease fees to those facilities with greater environmental impact.

COMMENT: A commenter asked where is the Department going in the regulation of commercial facilities which are discharging unacceptable pollutants into the ground waters of the State. These sites may result in somebody else being responsible for clean-up.

RESPONSE: The Department has an active program to identify and permit onsite waste disposal from existing industrial and commercial facilities. This program is funded through a Federal grant.

LAW AND PUBLIC SAFETY

(a)

STATE BOARD OF OPTOMETRISTS

Notice of Action on Petition for Rulemaking Practice of Optometry N.J.A.C. 13:38

Petitioner: New Jersey Optometric Association.
Authority: N.J.S.A. 52:14B-4(f); N.J.S.A. 45:12-4.

Take notice that on June 22, 1989, petitioner, a not-for-profit New Jersey Corporation composed of New Jersey licensed optometrists, filed a Petition for Rulemaking with the State Board of Optometrists regarding the use and prescription of pharmaceutical and therapeutic measures or agents by optometrists. Petitioner requested the Board to construe the provisions of N.J.S.A. 45:12-16 and determine and declare that the practice of optometry shall include "the use and prescription of pharmaceutical agents for the purposes of treating deficiencies, deformities, dis-

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eases or anomalies of the human eye including the removal of superficial foreign bodies from the eye and adnexae."

The Board's initial response, published on November 6, 1989 at 21 N.J.R. 3565(c), was to refer the matter to a subcommittee for further deliberation.

Based upon the report of the subcommittee and upon further deliberation, the Board of Optometrists voted, at its January 16, 1991 meeting, to deny the New Jersey Optometric Association's petition for rulemaking. The petition was denied because, on the basis of the information provided by the petitioner, it does not appear that the Board has the authority to promulgate such a rule.

(a)

STATE BOARD OF OPTOMETRISTS

Notice of Action on Two Petitions for Rulemaking Practice of Optometry N.J.A.C. 13:38

Petitioner: New Jersey Academy of Ophthalmology and Otolaryngology.

Authority: N.J.S.A. 52:14B-4(f); N.J.S.A. 45:12-4.

Take notice that on March 9, 1990, petitioner, through its counsel, John D. Fanburg, Esq., filed two petitions for rulemaking with the State Board of Optometrists. The first petition requested the Board to determine that the use and prescription of pharmaceutical and therapeutic measures or agents by optometrists is beyond the scope of an optometrist's licensure. The second petition requested the Board to determine that the management of post-ophthalmologic surgical care is beyond the scope of practice of optometry. Petitioner provided specific language for a regulation on this subject (see 22 N.J.R. 1634(c)). The Board's responses to the petitions follow:

1. Use and prescription of pharmaceutical agents by optometrists.

Upon consideration of this petition at its January 16, 1991 meeting, the Board voted to deny the petition. The Board is of the opinion that the use and prescription of pharmaceutical and therapeutic measures or agents by optometrists is not presently within the scope of an optometrist's licensure. The Board believes that its position in this regard is clear and that a rule prohibiting optometrists from prescribing is unnecessary.

2. Management of post-ophthalmologic surgical care.

A joint meeting of members of the Board of Optometrists and the Board of Medical Examiners was held on December 5, 1990, to discuss the matter, and efforts are ongoing by a joint committee of the two Boards to determine appropriate wording for a regulation on this subject. Accordingly, the petitioner's second petition for rulemaking is denied because it requests specific regulatory language. As stated, the Board of Optometrists, in conjunction with the Board of Medical Examiners, is developing its own language for a new rule on this subject.

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REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the March 4, 1991 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1991 d.1 means the first rule adopted in 1991.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT FEBRUARY 19, 1991

NEXT UPDATE: SUPPLEMENT MARCH 18, 1991

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

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N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
22 N.J.R. 1183 and 1290	April 16, 1990	22 N.J.R. 3275 and 3420	November 5, 1990
22 N.J.R. 1291 and 1408	May 7, 1990	22 N.J.R. 3421 and 3606	November 19, 1990
22 N.J.R. 1409 and 1648	May 21, 1990	22 N.J.R. 3607 and 3666	December 3, 1990
22 N.J.R. 1649 and 1806	June 4, 1990	22 N.J.R. 3667 and 3896	December 17, 1990
22 N.J.R. 1807 and 1964	June 18, 1990	23 N.J.R. 1 and 144	January 7, 1991
22 N.J.R. 1965 and 2062	July 2, 1990	23 N.J.R. 145 and 248	January 22, 1991
22 N.J.R. 2063 and 2202	July 16, 1990	23 N.J.R. 249 and 332	February 4, 1991
22 N.J.R. 2203 and 2386	August 6, 1990	23 N.J.R. 333 and 636	February 19, 1991
22 N.J.R. 2387 and 2622	August 20, 1990	23 N.J.R. 637 and 798	March 4, 1991
22 N.J.R. 2623 and 2860	September 4, 1990	23 N.J.R. 799 and 924	March 18, 1991
22 N.J.R. 2861 and 3072	September 17, 1990	23 N.J.R. 925 and 1048	April 1, 1991
22 N.J.R. 3073 and 3182	October 1, 1990	23 N.J.R. 1049 and 1226	April 15, 1991
22 N.J.R. 3183 and 3274	October 15, 1990		

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1:1-9.6	Adjournments: administrative correction	_____	_____	23 N.J.R. 687(a)
1:1-15.4	Privileges: administrative correction	_____	_____	23 N.J.R. 847(a)
1:10-8.1	Transmission of Economic Assistance cases	23 N.J.R. 3(a)		
1:13-1.1, 4.1	Division of Motor Vehicle cases	23 N.J.R. 928(a)		
1:13-14.4	Motor Vehicle cases: failure to appear	23 N.J.R. 639(a)		
1:13A-14.1	Lemon Law hearings: failure to appear	23 N.J.R. 639(a)		
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3:6-8	Conversions of savings and loan associations and savings banks	23 N.J.R. 929(b)		
3:6-13	Repeal (see 3:1-2.25, 2.26, 17)	23 N.J.R. 642(a)		
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CIVIL SERVICE—TITLE 4

Most recent update to Title 4: TRANSMITTAL 1990-3 (supplement July 16, 1990)

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5:23-4.19–4.22, 4A.12, 5.21, 5.22, 8.6, 8.10, 8.18, 8.19	Uniform Construction Code fees	23 N.J.R. 257(b)	R.1991 d.181	23 N.J.R. 1029(a)
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Most recent update to Title 5: TRANSMITTAL 1991-2 (supplement February 19, 1991)

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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7:0	Clean Water Enforcement Act: notice of intention to propose rules regarding civil administrative penalties	23 N.J.R. 935(b)		
7:1I-3.3	Sanitary Landfill Facility Contingency Fund: suspension of claims	22 N.J.R. 3675(a)		
7:2	State Park Service rules	22 N.J.R. 2652(a)		
7:5C-1.4, 3.1, 5.1	Endangered Plant Species Program	23 N.J.R. 812(a)		
7:6-1.31, 1.37, 1.42, 6.2, 6.3, 6.4	Boating rules	23 N.J.R. 392(a)	R.1991 d.225	23 N.J.R. 1192(a)
7:7A	Freshwater Wetlands Protection Act rules: water quality certification	23 N.J.R. 338(a)		
7:7E-5.3	Coastal growth ratings: preproposal regarding Western Ocean County	22 N.J.R. 1214(a)		
7:8-1.1, 1.2, 1.5, 2.2, 2.3, 3.1, 3.4, 3.5, 3.6	Water Pollution Control Act	22 N.J.R. 2870(a)		
7:10-1.3, 5.1	Safe Drinking Water rules: applicability of national regulations	———	———	23 N.J.R. 1150(b)
7:11-2.2, 2.3, 2.9	Delaware and Raritan Canal-Spruce Run/Round Valley Reservoir Complex: schedule of rates	22 N.J.R. 3676(a)		
7:11-4.3, 4.4, 4.9	Manasquan Reservoir Water Supply System: schedule of rates	22 N.J.R. 3678(a)		
7:13-7.1	Redelineation of Coles Brook in Hackensack and River Edge	23 N.J.R. 647(a)		
7:13-7.1	Redelineation of South Branch Raritan River in Hunterdon County	23 N.J.R. 647(b)		
7:13-7.1	Redelineation of Passaic River in Florham Park	23 N.J.R. 648(a)		
7:13-7.1	Redelineation of Lawrence and Heathcote Brooks in South Brunswick	23 N.J.R. 649(a)		
7:14-8.1, 8.2, 8.5	Water Pollution Control Act	22 N.J.R. 2870(a)		
7:14A-1.8	NJPDES fee schedule	22 N.J.R. 3679(a)	R.1991 d.214	23 N.J.R. 1151(a)
7:14A-15	Industrial wastewater pretreatment: preproposed rules	23 N.J.R. 149(a)		
7:18-1.1, 1.3, 1.4, 1.6, 1.7, 1.9, 2.1–2.4, 2.6, 2.7, 2.10–2.15, 5.2–5.5, 5.7, 5.8	Radon laboratory certification program	23 N.J.R. 29(b)		
7:22A-1.1, 1.2, 1.3, 1.4, 1.7, 3.1, 4, App.	Water Pollution Control Act	22 N.J.R. 2870(a)		
7:24	Dam Restoration Grant Program	23 N.J.R. 650(a)		
7:24	Dam Restoration Grant Program: administrative correction to proposal	23 N.J.R. 935(a)		
7:25	Division of Fish, Game, and Wildlife	23 N.J.R. 37(a)	R.1991 d.132	23 N.J.R. 848(b)
7:25-4.13, 4.17	Endangered and nongame wildlife species	22 N.J.R. 1308(a)		
7:25-12	Surf clam management	23 N.J.R. 223(a)	R.1991 d.173	23 N.J.R. 1001(a)
7:25-18.1	Winter flounder and red drum: size and possession limits	23 N.J.R. 43(a)		
7:25-18.5	Bait net and gill net regulation	22 N.J.R. 3685(a)		
7:25-18.5–18.11	Gill netting in Delaware Bay	22 N.J.R. 1311(a)		
7:25-22.3	Fishing for Atlantic menhaden	22 N.J.R. 3611(a)		
7:26-4.3, 4.4, 4.6, 15.6	Fee schedule for solid waste facilities	22 N.J.R. 3079(a)		
7:26-4A.3, 4A.5	Fee schedule for hazardous waste generators, facilities, and transporters	23 N.J.R. 814(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Camden, Gloucester, Essex and Sussex counties	22 N.J.R. 284(a)	R.1991 d.113	23 N.J.R. 719(a)
7:26-7.2, 7.4, 8.1, 8.5, 8.7, 8.13, 8.20	Hazardous waste management: waste code hierarchy; waste determination; waste oils listing; container labeling	22 N.J.R. 288(a)	R.1991 d.110	23 N.J.R. 715(a)
7:26-8.2, 8.8, 8.12	Hazardous waste management: Toxicity characteristic	23 N.J.R. 151(a)		
7:26-8.13	Hazardous waste from non-specific sources: F019 exclusion	23 N.J.R. 153(a)		
7:26-8.14	Hazardous waste management: methyl bromide production wastes	23 N.J.R. 154(a)		
7:26-8.15, 8.16	Hazardous waste management: ferric dextran and strontium sulfide	23 N.J.R. 44(a)	R.1991 d.209	23 N.J.R. 1166(a)
7:26-8.17, App. I	Delisting of hazardous waste at Beecham Laboratories	22 N.J.R. 3430(b)	R.1991 d.172	23 N.J.R. 1004(a)
7:26-8.19	Listing of hazardous wastes	22 N.J.R. 3299(a)	R.1991 d.156	23 N.J.R. 852(a)
7:26-8.19	Listing of hazardous waste: extension of comment period	23 N.J.R. 45(a)		
7:26-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, 12.4	Hazardous waste management	22 N.J.R. 3186(a)		
7:26-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, 12.4	Hazardous waste management: extension of comment period	22 N.J.R. 3431(a)		

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7:26A	Solid waste recycling	22 N.J.R. 3088(a)		
7:27-2	Control and prohibition of open burning: administrative corrections	_____	_____	23 N.J.R. 1166(b)
7:27-8	Air pollution control permit and certificate process	22 N.J.R. 292(a)	R.1991 d.109	23 N.J.R. 723(a)
7:27-8.2	Air pollution control permit and certificate process: correction to proposed amendment	22 N.J.R. 593(a)		
7:27-9	Sulfur in fuels: administrative corrections	_____	_____	23 N.J.R. 1166(b)
7:27-25.1, 25.2, 25.5, 25.7, 25.8	Air pollution by vehicular fuels	23 N.J.R. 45(b)		
7:27-25.1, 25.2, 25.5, 25.7, 25.8	Vehicular fuel air pollution: extension of time to inspect copies of proposed amendments and new rules	23 N.J.R. 261(a)		
7:28-3.5, 3.13, 4.19	Fee schedules for possession and use of radioactive materials	22 N.J.R. 3300(a)		
7:28-16.2	Dental radiographic installations: qualified individual	22 N.J.R. 3303(a)		
7:31-2.16	Toxic Catastrophe Prevention Act Program: annual registration fees	23 N.J.R. 818(a)		
7:36-8	Green Acres Program: public hearing requirement on proposed transfers or use of Department-held land and water	22 N.J.R. 593(b)	R.1991 d.151	23 N.J.R. 852(b)
7:36-8	Green Acres Program: public hearing and extension of comment period regarding public hearing requirement on proposed transfers or use of Department-held land and water	22 N.J.R. 1352(a)		
7:50-2.11, 4.66, 6.13	Pinelands Comprehensive Management Plan: preproposed amendments	22 N.J.R. 3432(a)		

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8:9	Handling of human remains	22 N.J.R. 3458(a)	R.1991 d.130	23 N.J.R. 888(a)
8:20-1.2	Birth Defects Registry: reporting requirements	23 N.J.R. 820(a)		
8:21A	Good drug manufacturing practices	22 N.J.R. 3189(a)		
8:24	Retail food establishments	23 N.J.R. 168(b)		
8:25	Youth Camp Safety Act standards	23 N.J.R. 651(a)		
8:26	Public recreational bathing	23 N.J.R. 376(a)		
8:31A-1, 2, 5, 7, 9, 10	Standard Hospital Accounting and Rate Evaluation (SHARE) Manual	22 N.J.R. 3460(a)	R.1991 d.212	23 N.J.R. 1169(a)
8:31B	Hospital reimbursement	22 N.J.R. 3724(a)	R.1991 d.158	23 N.J.R. 898(a)
8:31B-3	Hospital rate setting	23 N.J.R. 227(a)	R.1991 d.157	23 N.J.R. 889(a)
8:31B-3.73	Hospital reimbursement: reconciliation	22 N.J.R. 3724(a)	R.1991 d.213	23 N.J.R. 1176(a)
8:33H-3.3	Long-term care beds for AIDS and HIV-infected patients	23 N.J.R. 124(a)	R.1991 d.159	23 N.J.R. 905(a)
8:33L-2.4	Home health services for AIDS and HIV-infected patients	23 N.J.R. 124(a)	R.1991 d.159	23 N.J.R. 905(a)
8:33P-2.1, 2.4	Designation of additional Level II trauma centers	23 N.J.R. 822(a)		
8:39-19.5, 20.1, 29.1, 29.3, 30.1	Long-term care facilities: Mantoux tuberculin testing of staff; pharmacy organization	22 N.J.R. 3612(a)	R.1991 d.160	23 N.J.R. 905(b)
8:43G-5.6	Hospital licensure: reportable events	22 N.J.R. 3469(a)		
8:43G-6	Hospital licensure: anesthesia	22 N.J.R. 3470(a)		
8:59-1.3, 12	Worker and Community Right to Know: certification of consultants and consulting agencies	22 N.J.R. 1892(a)		
8:65	Controlled dangerous substances	22 N.J.R. 3190(a)		
8:65	Controlled dangerous substances: reopening of comment period	23 N.J.R. 823(a)		
8:66	Alcohol countermeasures: waiver of expiration provision of Executive Order No. 66(1978)	23 N.J.R. 177(a)		
8:71	Interchangeable drug products (see 22 N.J.R. 1597(b), 2163(a))	22 N.J.R. 596(a)	R.1990 d.570	22 N.J.R. 3581(c)
8:71	Interchangeable drug products (see 22 N.J.R. 2162(b), 3149(a), 3581(b))	22 N.J.R. 1214(b)	R.1991 d.161	23 N.J.R. 906(a)
8:71	Interchangeable drug products	22 N.J.R. 1511(a)		
8:71	Interchangeable drug products (see 22 N.J.R. 3582(a); 23 N.J.R. 206(a))	22 N.J.R. 2501(a)	R.1991 d.162	23 N.J.R. 907(a)
8:71	Interchangeable drug products	22 N.J.R. 3191(a)	R.1991 d.30	23 N.J.R. 206(b)
8:71	Interchangeable drug products	23 N.J.R. 178(a)		

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9:1-1.2, 3.1	Characteristics of a university	22 N.J.R. 1655(b)		
9:2-14.2	Immunization requirements for students: exemptions	22 N.J.R. 1215(a)		
9:3-4	Minority and women-owned businesses: participation in State construction contracts	22 N.J.R. 1656(b)		
9:4-3.12	Noncredit courses at county community colleges	22 N.J.R. 2254(b)		
9:4-4	County community colleges: alumni trustee representatives	22 N.J.R. 1657(a)		
9:5	Tuition policies for public institutions	22 N.J.R. 3437(a)	R.1991 d.177	23 N.J.R. 1005(a)

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9:7-4.4	Garden State Scholarships: award amounts	23 N.J.R. 4(a)	R.1991 d.178	23 N.J.R. 1005(b)
9:11-3	C. Clyde Ferguson Law Scholarship	22 N.J.R. 3439(a)		

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10:3-3	Contract administration: Request for Proposal (RFP) process	23 N.J.R. 957(a)		
10:38	Interim Assistance Procedures Manual	23 N.J.R. 261(b)		
10:43-7.1	Determination of need for a guardian	22 N.J.R. 2671(a)		
10:49-6.6	Recoveries involving county welfare agencies/boards of social services	22 N.J.R. 2672(a)	R.1991 d.135	23 N.J.R. 856(a)
10:50	Transportation Services Manual	23 N.J.R. 5(a)	R.1991 d.167	23 N.J.R. 1006(a)
10:51-1.1, 1.14, 3.3, 3.12	Bundled drug services	23 N.J.R. 281(a)		
10:52-1.1, 1.22	Bundled drug services	23 N.J.R. 281(a)		
10:53-1.1, 1.17	Bundled drug services	23 N.J.R. 281(a)		
10:54	Physician's Services Manual	22 N.J.R. 3711(a)	R.1991 d.136	23 N.J.R. 858(a)
10:54-1.1, 1.16	Bundled drug services	23 N.J.R. 281(a)		
10:56-1.1, 1.4	Bundled drug services	23 N.J.R. 281(a)		
10:57	Podiatry Services Manual	22 N.J.R. 3439(b)	R.1991 d.129	23 N.J.R. 858(b)
10:57-1.1, 1.18	Bundled drug services	23 N.J.R. 281(a)		
10:58	Nurse-Midwifery Services Manual	22 N.J.R. 3613(a)	R.1991 d.153	23 N.J.R. 858(c)
10:59	Medical Supplier Manual	22 N.J.R. 3712(a)	R.1991 d.137	23 N.J.R. 858(d)
10:61	Independent Laboratory Services Manual	22 N.J.R. 3713(a)	R.1991 d.138	23 N.J.R. 858(e)
10:64	Hearing Aid Services Manual	22 N.J.R. 3614(a)	R.1991 d.154	23 N.J.R. 859(a)
10:66-1.2, 1.10	Bundled drug services	23 N.J.R. 281(a)		
10:67	Psychologist's Services Manual	22 N.J.R. 3615(a)	R.1991 d.142	23 N.J.R. 859(b)
10:69A-6.11	PAAD program: release of eligibility files to Division of Motor Vehicles	23 N.J.R. 7(a)		
10:70	Medically Needy Manual	23 N.J.R. 964(a)		
10:71-5.4, 5.5, 5.6, 5.7	Medicaid Only: new eligibility computation amounts	23 N.J.R. 233(a)	R.1991 d.169	23 N.J.R. 1007(a)
10:72-1.1, 3.4, 4.1, 4.3, 4.5	Medicaid eligibility: pregnant women and children	Emergency (expires 5-27-91)	R.1991 d.223	23 N.J.R. 1200(a)
10:81-15	Child Care Plus Demonstration	23 N.J.R. 8(a)		
10:82-1.1A	AFDC Standard of Need	23 N.J.R. 285(a)		
10:82-1.1A	AFDC Standard of Need: public hearings and extension of comment period	23 N.J.R. 967(a)		
10:82-5.10	AFDC Emergency Assistance	23 N.J.R. 967(b)		
10:83-1.11	Supplemental security income payment levels	23 N.J.R. 234(a)	R.1991 d.168	23 N.J.R. 1008(a)
10:85-4.1	General Assistance Program: Standard of Need	23 N.J.R. 286(a)		
10:85-4.1	General Assistance Standard of Need: public hearings and extension of comment period	23 N.J.R. 967(a)		
10:85-4.6	General Assistance: emergency assistance	22 N.J.R. 2078(a)	R.1991 d.174	23 N.J.R. 1177(a)
10:85-4.6	Emergency assistance: public hearing and extension of comment period	22 N.J.R. 2674(a)		
10:87-2.3, 2.6, 2.23, 2.30, 2.31, 3.6, 4.8, 5.5, 5.6, 5.9, 5.10, 7.14, 9.5, 9.7, 10.3, 10.9, 10.10, 10.21, 10.24, 11.23, App. A	Food Stamp Program: miscellaneous requirements	23 N.J.R. 179(a)		
10:109-1	Economic Assistance staff development program: Ruling Number 11	22 N.J.R. 2222(a)	R.1991 d.111	23 N.J.R. 688(c)
10:123-3	Social Services Program: personal needs allowance for residents of health care facilities and boarding houses	23 N.J.R. 382(a)	R.1991 d.215	23 N.J.R. 1191(a)
10:123A	Personal Attendant Services Program	22 N.J.R. 1527(a)		
10:123A	Personal Attendant Services Program: extension of comment period	22 N.J.R. 2082(a)		

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10A:2-3	Expenditure of inmate welfare funds	23 N.J.R. 155(a)	R.1991 d.188	23 N.J.R. 1008(b)
10A:3-1.1-1.4, 2	Inmate "keep separate status"	23 N.J.R. 383(a)		
10A:4	Inmate discipline	23 N.J.R. 658(a)		
10A:16-7.4	Distribution of money and personal belongings of deceased inmates	23 N.J.R. 156(a)	R.1991 d.187	23 N.J.R. 1009(a)
10A:18-1.4, 6.7	Attorney-client visits	23 N.J.R. 14(a)	R.1991 d.155	23 N.J.R. 859(c)
10A:31-3.5, 22.2	Adult county facilities	22 N.J.R. 3714(c)	R.1991 d.143	23 N.J.R. 860(a)
10A:31-13.9, 13.10, 13.18	Adult county facilities: pregnant inmates; dental care	23 N.J.R. 15(a)	R.1991 d.190	23 N.J.R. 1128(b)
10A:32-4.2	Transfer of juvenile under State sentence	22 N.J.R. 3714(b)	R.1991 d.118	23 N.J.R. 690(a)

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10A:34-3	Processing and housing juveniles in municipal detention facilities	23 N.J.R. 935(c)		
10A:35	Alternatives to Juvenile Incarceration Grant Program	23 N.J.R. 156(b)	R.1991 d.192	23 N.J.R. 1129(a)

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11:0	Automobile insurance: preproposal regarding model anti-fraud plan	22 N.J.R. 1983(a)		
11:1	Administration: miscellaneous rules	22 N.J.R. 3686(a)	R.1991 d.101	23 N.J.R. 690(b)
11:1-6	New Jersey Property-Liability Insurance Guaranty Association: assessment premium surcharge	23 N.J.R. 823(b)		
11:1-32	Department fees	23 N.J.R. 825(a)		
11:2-17.7	Automobile coverage: payment of PIP claims	22 N.J.R. 1677(a)		
11:2-29	Orderly withdrawal of insurance business	23 N.J.R. 15(b)		
11:2-31	Premiums for perpetual homeowners insurance	22 N.J.R. 601(a)	R.1991 d.139	23 N.J.R. 860(b)
11:2-35	Relief from insurer obligations under FAIR Act	23 N.J.R. 660(a)		
11:3-10.5	Automobile damage repair confirmation and reporting	22 N.J.R. 3442(b)		
11:3-24.4	Automobile insurance coverage: policy constants	22 N.J.R. 3441(a)	R.1991 d.216	23 N.J.R. 1132(a)
11:3-25.4	Automobile insurance coverage: residual market equalization charges	22 N.J.R. 3442(a)	R.1991 d.217	23 N.J.R. 1132(b)
11:3-29.6	Personal Auto Injury Fee Schedules: Physicians' Services and Dental Services	_____	_____	23 N.J.R. 861(a)
11:3-32	Out-of-state vehicles: certification of mandatory liability coverage	22 N.J.R. 1040(a)	Expired	
11:3-33	Appeals from denial of automobile insurance	22 N.J.R. 2457(a)		
11:3-33	Appeals from denial of automobile insurance: comment period correction	22 N.J.R. 2647(a)		
11:3-36	Automobile physical damage coverage inspection procedures: delay of operative date	_____	_____	23 N.J.R. 1132(c)
11:3-39	Automobile physical damage coverage: rate reductions for anti-theft devices and safety features	23 N.J.R. 384(a)		
11:4-16.6, 16.8, 23.6, 23.8, App.	Medicare supplement coverage	22 N.J.R. 771(a)	R.1991 d.121	23 N.J.R. 690(c)
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11:5-1.36	Real Estate Guaranty Fund: special assessment	22 N.J.R. 3688(a)	R.1991 d.114	23 N.J.R. 701(a)
11:10-1.4	Dental plan organization: certificate of authority renewal fee	23 N.J.R. 825(a)		
11:13-7	Commercial lines policy forms	23 N.J.R. 159(a)		
11:16	Fraud prevention: claim form statement of liability; reporting of automobile theft or salvage	22 N.J.R. 3688(b)	R.1991 d.102	23 N.J.R. 702(a)
11:16-3	Automobile damage repair confirmation and reporting	22 N.J.R. 3442(b)		
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11:17A-1.2, 1.7	Appeals from denial of automobile insurance	22 N.J.R. 2457(a)		
11:17A-1.2, 1.7	Appeals from denial of automobile insurance: comment period correction	22 N.J.R. 2647(a)		
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12:45-1	Vocational Rehabilitation Services: procedures and standards	22 N.J.R. 1045(c)	R.1991 d.189	23 N.J.R. 1133(b)
12:45-1	Vocational Rehabilitation Services: correction to proposal	22 N.J.R. 1230(a)		
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13:14	Family Leave Act rules: public hearing	22 N.J.R. 2395(a)
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13:18-6	Verification of automobile liability insurance coverage	23 N.J.R. 973(a)		
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13:20-10.1	Automatic vehicle identification systems: traffic management	23 N.J.R. 21(a)		
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